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Monday
August 17, 1992

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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404–639–3528 (Atlanta area)]
1–800–347–1997 (outside Atlanta area)

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Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6464 of August 12, 1992

82nd Airborne Division 50th Anniversary Recognition Day, 1992

By the President of the United States of America

A Proclamation

Members of the United States Armed Forces have proved, time and again, that they are the most highly prepared and thoroughly effective defense forces in the world. On this occasion, as we celebrate the 50th anniversary of the Army's 82nd Airborne Division, we salute an elite group of military personnel who stand among the best of the best.

Emerging from the ranks of the first "All Americans," an infantry unit that participated in three major campaigns during World War I and saw more consecutive days on the front lines than any other unit, the 82nd was reactivated just a few months after the United States entered World War II. The unit was designated as the Army's first airborne division on August 15, 1942.

The first such infantry unit of its kind, the 82nd Airborne quickly established its reputation as a leader in courage and achievement as well. From its initial parachute and glider assaults into Sicily and Salerno, through its participation at the Battle of the Bulge—where it helped to inflict the blows that led to the final collapse of the Nazi war machine—the 82nd proved to be a fearsome weapon in the Allied struggle against tyranny. "Those devils in the baggy pants," as an exhausted enemy soldier once described them, found no sacrifice too great, no counter-fire too fierce as they stormed from the skies in defense of freedom. By the end of World War II, more than 3,000 members of the 82nd had been killed or were missing in action. Another 12,604 had been wounded. Today we know that their extraordinary selflessness and daring not only hastened the day of victory but also offered enduring evidence of America's resolve to preserve liberty and democracy.

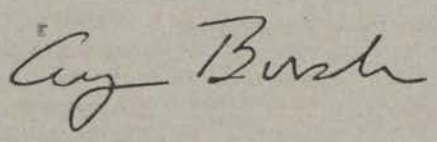
Members of the 82nd Airborne Division have maintained its tradition of excellence well beyond the events of a half-century ago, and on this occasion, we also recall their more recent heroism in the Dominican Republic, Vietnam, Grenada, and Central America. Just a few years ago, more than 2,000 Division paratroopers took part in Operation Just Cause, which liberated the people of Panama from a ruthless dictator. During the successful international effort to free Kuwait from the sinister aggression of Iraq's Saddam Hussein, members of the 82nd proved, once again, why they are the United States' premier rapid deployment force.

Ready at all times to deploy anywhere in the world, and with just 18 hours notice, the 82nd Airborne Division is a leader among leaders, a special object of pride among the strong and the brave. Thus, while all of America's service members and veterans deserve our respect and thanks, on this 50th anniversary of the 82nd Airborne, we raise a special salute to "America's Guard of Honor."

The Congress, by Senate Joint Resolution 270, has designated August 15, 1992, as "82nd Airborne Division 50th Anniversary Recognition Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby encourage all Americans to join in celebrating the 50th anniversary of the activation of the 82nd Airborne Division. Let us honor with appropriate ceremonies and activities the courageous individuals who have served in the 82nd over the years, and let us remember through public and private prayer all those who have died in the line of duty.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of August, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



[FR Doc. 92-19651
Filed 8-13-92; 2:42 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 159
Monday, August 17, 1992

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 327

RIN 0583-AB60

[Docket No. 92-014F]

Imported Product: Addition of Croatia and Slovenia to the List of Eligible Countries

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; Confirmation of interim rule.

SUMMARY: The Food Safety and Inspection Service is confirming the interim rule, published on April 29, 1992 (57 FR 18079), which amended the Federal meat inspection regulations to reflect the newly recognized States of Croatia and Slovenia as continuing to be eligible to import meat products into the United States. On April 7, 1992, the government of the United States recognized the independent countries of Croatia and Slovenia (formerly Republics of Yugoslavia). FSIS had determined that these newly recognized States continue to be eligible to import meat products into the United States in accordance with the requirements of part 327 of the Federal meat inspection regulations. This action clarifies that the newly recognized States of Croatia and Slovenia continue to be eligible to import meat products into the United States.

EFFECTIVE DATE: April 29, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. William Dubbert, (202) 720-3473.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator, FSIS, has determined that this final rule is not a major rule under Executive Order 12291. It is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. All State and local laws, regulations or policies, except those that are consistent with the final rule and apply to imported meat and meat products after entry into the United States, are preempted. This final rule is not intended to have retroactive effect. There are no administrative procedures to be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Effect on Small Entities

The Administrator has made a determination that this final rule would not have a significant economic impact on a substantial number of small entities, in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). This action confirms the addition of the newly recognized States of Croatia and Slovenia to the list of countries eligible to import meat products into the United States. The current amount of product exported to the United States from Croatia or Slovenia is expected to remain the same.

Background

Prior to April 7, 1992, the United States Government recognized the country of Yugoslavia, consisting of the Republics of Bosnia-Hercegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia. On April 7, 1992, the United States Government recognized Bosnia-Hercegovina, Croatia and Slovenia as independent States. Montenegro, Serbia, and Macedonia remain in the common State currently known as Yugoslavia, although Macedonia has declared its independence from Yugoslavia.

Yugoslavia was listed as eligible to import products of cattle, sheep, swine, and goats into the United States on June 25, 1959. Inspection officials of the national government of Yugoslavia have maintained supervisory control over the inspection programs in the Yugoslav Republics. The laws, regulations, and other documents were issued by the national government and enforced by inspection officials in the Republics. Republic inspection officials were responsible to the national government to ensure that all United States requirements were met.

During the last 32 years, Yugoslav inspection officials have annually certified approximately 15 plants as fully complying with requirements "at least equal to" all the inspection, building construction standards, and other requirements for the slaughter and preparation of carcasses, parts thereof, meat and meat food products of cattle, sheep, swine, and goats as applied to official establishments in the United States.

On January 1, 1991, Yugoslavia certified one plant in Slovenia (establishment 22), three plants in Croatia (establishments 5, 10 and 139), and twelve plants in Serbia. Yugoslavia notified FSIS on October 18, 1991, that it would no longer maintain supervisory control over establishment 22 in Slovenia as of October 21, 1991, and it delisted establishment 22 on October 21, 1991. On January 23, 1992, Yugoslavia notified FSIS that it would no longer maintain supervisory control over the plants in Croatia, and delisted establishments 10 and 139 on January 15, 1992. The other plant in Croatia, establishment 5, was closed and delisted on October 18, 1991.

Inspection officials of the Republic of Slovenia notified FSIS on April 17, 1992, that they continued to maintain supervisory control over the meat inspection system in Slovenia after October 18, 1991. Slovenian officials stated that they had legal authority and responsibility to enforce the same laws and regulations that were in effect prior to October 18, 1991. Further, the same qualified inspectors were assigned to establishment 22 to ensure that "at least equal to" standards for inspection, sanitation, quality, species verification, residues, and other requirements were applied in this plant. An FSIS representative had conducted an on-site review of the meat inspection system at establishment 22 on June 11, 1991, and

FSIS determined that the meat inspection system was acceptable.

Inspection officials of the Republic of Croatia notified FSIS on April 17, 1992, that they continued to maintain supervisory control over the meat inspection system in Croatia after January 15, 1992. Further, the same qualified inspectors were assigned to establishments 10 and 139 to ensure that "at least equal to" standards for inspection, quality, species verification, residues, and other requirements were applied in these plants. An FSIS representative had conducted an on-site review of the meat inspection systems at establishments 10 and 139 on June 10, 1991, and FSIS determined that the meat inspection systems were acceptable.

The meat inspection system in the Republic of Serbia was also reviewed by an FSIS representative during June 1991. Following the review, FSIS determined that the meat inspection system maintained by Yugoslavian officials was acceptable.

Each of the former Yugoslav Republics continues to maintain a meat inspection system under the same laws and regulations and employs competent and qualified inspectors to ensure that standards "at least equal to" the standards applied to products produced in the United States are enforced in plants certified to prepare products for export to the United States. Therefore, FSIS has determined that the Foreign Official Meat Establishment Certificates as provided in 9 CFR 327.2(a)(3) and the Official Meat Inspection Certificates as provided in 9 CFR 327.4 that have been or will be signed by meat inspection officials in Yugoslavia (Serbia), the Republic of Croatia, and the Republic of Slovenia are acceptable.

Therefore, on April 25, 1992, FSIS published an interim rule (57 FR 12087), effective immediately, which added the Republic of Croatia and the Republic of Slovenia to the list of countries eligible to import meat and meat products into the United States. FSIS received one comment in response to the interim rule. The commenter fully supported FSIS's action.

Since publication of the interim rule, FSIS inspection officials made onsite visits to individual establishments and laboratories and assessed the inspection systems of Croatia and Slovenia. As a result, the inspection systems have been judged to be "at least equal to" the Federal system of meat inspection in the United States.

Because the meat inspection systems in Croatia and Slovenia have been judged to be "at least equal to" the United States meat inspection system, the newly recognized States remain eligible to import meat products into the United States. Therefore, FSIS is confirming the interim rule, published on April 29, 1992 (57 FR 18079), which amended the Federal meat inspection regulations by adding the Republic of Croatia and the Republic of Slovenia to the list of eligible countries in 9 CFR § 327.2 as set forth below.

List of Subjects in 9 CFR Part 327

Imported products; Meat inspection.

PART 327—IMPORTED PRODUCTS

Accordingly, FSIS is adopting as a final rule, without change, the interim rule that amended § 327.2 which was published on April 29, 1992 at 57 FR 18079.

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

Done at Washington, DC, on: August 3, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92–19465 Filed 8–14–92; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Parts 220, 300, and 320

Existing Regulations and Programs; Regulatory Review

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy's Office of Fossil Energy is eliminating the regulations codified at 10 CFR part 220, entitled "Strategic Petroleum Reserve Crude Oil Allocation;" 10 CFR part 300, entitled "Coal Loan Guarantee Program;" and 10 CFR part 320, entitled "University Coal Research Laboratories Program," pursuant to the regulatory review program requested in the President's January 28, 1992, Memorandum for Certain Department and Agency Heads on the subject of "Reducing the Burden of Government Regulation."

EFFECTIVE DATE: August 17, 1992.

FOR FURTHER INFORMATION CONTACT: Keith N. Frye, Director, Office of Business Operations (FE–13), United States Department of Energy, Washington, DC 20585, (301) 903–2644.

SUPPLEMENTARY INFORMATION: On June 19, 1992, the Department of Energy, Office of Fossil Energy, published a Notice of Proposed Rulemaking in the **Federal Register** (57 FR 27395) proposing that 10 CFR parts 220, 300 and 320 be eliminated for the reasons set forth below. The DOE allowed a 30 day comment period. No comments were received, and the proposed rule is now being issued as final.

The regulations codified at 10 CFR part 220, entitled "Strategic Petroleum Reserve Crude Oil Allocation," are being eliminated because they refer to options for allocating crude oil which are no longer available, due to the expiration of the Emergency Petroleum Allocation Act. Furthermore, in 1982, Strategic Petroleum Reserve Plan Amendment Number Four added a number of the terms and conditions that would apply to the use of a directed sales method to distribute SPR crude oil. Accordingly, the Department believes that if the directed sales method were to be employed, it would be appropriate to publish new regulations, rather than rely on 10 CFR part 220 as now written.

The regulations codified at 10 CFR part 300, entitled "Coal Loan Guarantee Program," are being eliminated because the program applicable to these regulations was suspended effective August 8, 1986, due to a lack of program loan budget authority and public interest in the program (51 FR 24610, July 9, 1986).

The regulations codified at 10 CFR part 320, entitled "University Coal Research Laboratories Program," are being eliminated since no budget authority was provided for the program and the regulations were never utilized. In lieu of it, budget authority was provided for Fossil Energy's Advanced Research and Technology Development Program, which provides competitive university research awards pursuant to general procurement regulations.

Review under Executive Order 12291: In accordance with the requirements of Executive Order 12291, this rule has been reviewed by the Office of Management and Budget.

List of Subjects

10 CFR Part 220

Oil and Gas reserves, Petroleum allocation, Strategic and critical materials.

10 CFR Part 300

Coal, Loan programs—Energy, Mines.

10 CFR Part 320

Coal, Colleges and Universities, Grant programs—Energy, Inventions and patents, Laboratories, Reporting and recordkeeping requirements, Research.

Issued in Washington, DC on July 24, 1992.

James G. Randolph,

Assistant Secretary for Fossil Energy.

For the reasons set forth in the preamble, title 10, chapter II, of the Code of Federal Regulations is amended as set forth below:

PART 220—STRATEGIC PETROLEUM RESERVE CRUDE OIL ALLOCATION

(1) Part 220 is removed.

PART 300—COAL LOAN GUARANTEE PROGRAM

(2) Part 300 is removed.

PART 320—UNIVERSITY COAL RESEARCH LABORATORIES PROGRAM

(3) Part 320 is removed.

[FR Doc. 92-19429 Filed 8-14-92; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-95-AD; Amendment 39-8323; AD 92-16-14]

Airworthiness Directives; Beech Model 400A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech Model 400A series airplanes. This action requires a one-time inspection of the flame arrestor filter located in the aft fuel tank vent system to determine its manufacturing material, and replacement with a filter made of aluminum honeycomb material, if necessary. This amendment is prompted by an investigation conducted by the manufacturer, which determined that certain aft fuel tank vent systems may contain flame arrestor filters that are not manufactured of aluminum honeycomb material, which is required for the proper operation of the flame arrestor assembly. The actions specified in this AD are intended to prevent fire and potential explosion of the fuselage fuel tanks.

DATES: Effective September 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-95-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Propulsion Branch, ACE-140W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4145; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION: The manufacturer has advised the FAA that certain Beech Model 400A series airplanes currently may have a flame arrestor filter constructed of phenolic honeycomb material installed in the aft fuselage fuel tank vent system instead of a flame arrestor filter constructed of aluminum honeycomb material. Aluminum honeycomb material is essential because the heat transfer characteristics of phenolic honeycomb material are inadequate to extinguish a fire in the vent system. (Beech Model 400A type design requires that the flame arrestor filter be fabricated from aluminum honeycomb material.) This condition, if not corrected, could result in fire and potential explosion of the fuselage fuel tanks.

To date, there have been no accidents or incidents of fire or explosion involving Beech Model 400A series airplanes on which a flame arrestor filter made of phenolic honeycomb material has been installed in the aft fuel tank vent system. However, the fuselage fuel tank vent system of the affected airplanes is totally unprotected from any ignition source, either on the ground or airborne. These airplanes are particularly susceptible to the unsafe condition during the summer months because of increased outside temperatures, which cause an increase in the development of fuel vapors, and the increased frequency of lightning. In light of this, it is essential that the flame arrestor filter assembly operate properly in order to ensure that it is capable of extinguishing a fire in the vent system should one occur.

The FAA has reviewed and approved Beech Service Bulletin 2445, dated June 1992, that describes procedures for a one-time visual inspection of the flame arrestor filter of the aft fuel tank vent to determine its manufacturing material, and replacement, if necessary. Some of the filters installed on the affected airplanes may have been taken from stock that was manufactured of phenolic honeycomb material instead of aluminum honeycomb material. Aluminum honeycomb is required so that the flame arrestor assembly will properly function.

Since an unsafe condition has been identified that is likely to exist or develop on other Beech Model 400A series airplanes of the same type design, this AD is being issued to prevent fire and potential explosion of the fuselage fuel tanks. This AD requires a one-time visual inspection of the flame arrestor filter of the aft fuel tank vent to determine its manufacturing material, and replacement with a filter made of aluminum honeycomb material, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

This AD also prohibits the future installation on these airplanes of any flame arrestor filters made of phenolic honeycomb material.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **"ADDRESSES."** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and

suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-95-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-14. Beech: Amendment 39-8323. Docket 92-NM-95-AD.

Applicability: Model 400A series airplanes having serial numbers RK-1 through RK-28, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire and potential explosion of the fuselage fuel tanks, accomplish the following:

(a) Within 14 days after the effective date of this AD, conduct a one-time visual inspection of the flame arrestor filter, Beech part number 45A48235-3, to determine whether it is manufactured of aluminum honeycomb (silver-colored) or phenolic honeycomb (brown-colored) material, in accordance with Beech Service Bulletin 2445, dated June 1992.

(1) If the filter is made of aluminum honeycomb material, no further action is required.

(2) If the filter is made of phenolic honeycomb material, prior to further flight, replace the currently installed flame arrestor filter with one having Beech part number 45A48235-5, or with Beech part number 45A48235-3 that has been confirmed to be made of aluminum.

(b) As of the effective date of this AD, no flame arrestor filter, Beech P/N 45A48235-3, constructed of phenolic honeycomb material shall be installed on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection shall be done in accordance with Beech Service Bulletin 2445, dated June 1992.

Note: The issue date of this Beech Service Bulletin 2445 is indicated only on page 1 of 4; no other page is dated.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 110, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 1, 1992.

Issued in Renton, Washington, on July 15, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19490 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-125-AD; Amendment 39-8329; AD 92-16-19]

Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Lockheed Model L-1011-385 series airplanes, that currently requires a one-time inspection to direct missing, sheared, or deformed horizontal stabilizer lower actuator attach pins, and replacement of the pins, if necessary. That amendment was prompted by reports of detached, fractured, and deformed pins found in the horizontal stabilizer lower actuator attach fitting. This amendment requires either a one-time magnetic particle inspection to detect cracks on the horizontal stabilizer actuator pins and replacement of any cracked pins found, or replacement of each of the fur actuator pins. This AD also requires placing a life limit on certain actuator pins. Loss of a single pin could result in an increased load on the remaining pins; this condition, if not corrected, could result in the accelerated failure of the remaining pins, and consequent total loss of pitch control.

DATES: Effective September 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–125–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Lockheed Western Export Company (LWEC), Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at FAA, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: On May 28, 1992, the FAA issued AD 92–10–51, Amendment 39–8271 (57 FR 224356, June 9, 1992), to require a one-time inspection to detect missing, sheared, or deformed horizontal stabilizer lower actuator attach pins, and replacement of the pins, if necessary. That action was prompted by reports of detached, fractured, and deformed pins found in the horizontal stabilizer lower actuator attach fitting. Loss of a single pin could result in an increased loan on the remaining pins; this condition, if not corrected, could result in the accelerated failure of the remaining pins, and consequent total loss of pitch control.

Since the issuance of that AD, the FAA has reviewed and approved Lockheed Service Bulletin 093–27–3-04, Revision 1, dated May 28, 1992, which describes procedures for a one-time magnetic particle inspection to detect cracks on the horizontal stabilizer actuator pins and replacement of any cracked pins found. The service bulletin also describes procedures for replacement of each of the four actuator pins as an alternative to performing the magnetic particle inspection. In addition, the service bulletin describes procedures for establishing a life limit of 12,000 landings for actuator pins having part number 1563117–101.

The FAA has determined that the magnetic particle inspection is necessary in order to ensure that cracks in he actuator pins are found in a timely manner and addressed prior to the failure of the pin. Such cracking may not be detected by visual inspection alone, as currently required by AD 92–10–51. Additionally, due to the service history of the part number 1563117–101 actuator pins, the FAA considers that placing a life limit of 12,000 landings on these pins is warranted in order to maintain an acceptable level of safety. The FAA has determined that the accomplishment of these actions will positively address the unsafe condition identified as failure of the actuator pins and consequent total loss of pitch control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 92–10–51 to require either a one-time magnetic particle inspection to detect cracks on the horizontal stabilizer actuator pins and replacement of any cracked pins found, or replacement of each of the four actuator pins. This AD would also require placing a life limit of 12,000 landings on part number 1563117–101 actuator pins.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–125–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft.

It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8271 (57 FR 24356, June 9, 1992), and by adding a new airworthiness directive (AD), amendment 39-8329, to read as follows:

92-16-19. Lockheed Aeronautical Systems Company: Amendment 39-8329. Docket 92-NM-125-AD. Supersedes AD 92-10-51, Amendment 39-8271.

Applicability: All Model L-1011-385 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of airplane pitch control, accomplish the following:

(a) Prior to the accumulation of 12,000 landings, or within 3 days after June 24, 1992 (the effective date of AD 92-10-51, Amendment 39-8271), whichever occurs later, accomplish the procedures specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Gain access to the lower end of the stabilizer hydraulic actuators (four per airplane) where they attach to the front spar of the horizontal stabilizer center box structure at Fuselage Station FS 1875.

(2) Inspect for missing, sheared, or deformed stabilizer lower actuator attach pins, part number 1563117-101 (one per actuator).

(3) If any pin is missing, sheared, or deformed, replace the pin prior to further flight.

(b) At the applicable time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, either perform a one-time magnetic particle inspection to detect cracks on each of the four lower horizontal stabilizer actuator pins (part number 1563117-101), *or* replace each of the four actuator pins (part number 1563117-101) with a new pin, in accordance with Lockheed Service Bulletin 093-27-304, Revision 1, dated May 28, 1992.

(1) For airplanes that have accumulated less than 12,000 landings as of the effective date of this AD: Prior to the accumulation of 12,000 landings, or within 60 days after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated at least 12,000 landings but not more than 20,000 landings as of the effective date of this AD: Within 45 days after the effective date of this Ad.

(3) For airplanes that have accumulated more than 20,000 landings as of the effective date of this AD: Within 30 days after the effective date of this AD.

(c) If a magnetic particle inspection is performed in accordance with paragraph (b) of this AD, accomplish the procedures specified in paragraph (c)(1) or (c)(2), as applicable:

(1) If any actuator pin is found to be cracked: Prior to further flight, replace the cracked pin with a new pin, in accordance with Lockheed Service Bulletin 093-27-304, Revision 1, dated May 28, 1992. Thereafter, prior to the accumulation of 12,000 landings on each actuator pin, part number 1563117-101, it must be replaced with a new pin.

(2) If no actuator pins are found to be cracked: Prior to the accumulation of 1,000 landings after accomplishing the magnetic particle inspection, replace the pin with a new pin, in accordance with Lockheed Service Bulletin 093-27-304, Revision 1, dated May 28, 1992. Thereafter, prior to the accumulation of 12,000 landings on each actuator pin, part number 1563117-101, it must be replaced with a new pin.

(d) If each of the four actuator pins, part number 1563117-101, are replaced with a new pin in accordance with paragraph (b) of this AD: Thereafter, prior to the accumulation of 12,000 landings on each actuator pin, it must be replaced with a new pin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of the AD can be accomplished.

(g) The inspection and replacement shall be done in accordance with Lockheed Service Bulletin 093-27-304, Revision 1, dated May 28, 1992, which contains the following list of effective pages:

Page Number	Revision Level	Date
1—8	1	May 28, 1992.
9—11	Original	May 15, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Western Export Company (LWEC), Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 1, 1992.

Issued in Renton, Washington, on July 17, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19487 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-139-AD; Amendment 39-8342; AD 92-17-13]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC-10 series airplanes. This action requires a one-time visual inspection to detect cracks of the wing pylon aft bulkheads and upper spar webs, and repair, if necessary. This amendment is prompted by reports of fatigue cracking that occurred in the wing pylon aft bulkheads on two airplanes. Cracking in these area, if not detected and corrected in a timely manner, could lead to failure of the wing pylon aft bulkhead and subsequent separation of the engine and pylon from the airplane.

DATES: Effective September 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-139-Ad, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, Attention: Business Unit Manager, Technical Publications & Technical Administrative Support C1-L5B (56-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Moreland, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA Transport Airplane Directorate, 3229

East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: Recently, the FAA was notified of the discovery of cracking in the wing pylon aft bulkheads of two McDonnell Douglas Model DC–10 series airplanes:

On one airplane, the bulkhead crack initiated from the lower surface of the upper forward flange at the forward edge. This crack was determined to have been initiated and propagated by fatigue. The subject airplane had accumulated 57,176 flight hours and 23,028 flight cycles at the time of the discovery of the crack.

On the other airplane, the bulkhead crack initiated at a bolt hole in the upper forward flange. The cause of the crack at the point of origin could not be determined, due to post-fracture mechanical damage; however, crack propagation was determined to have been caused by fatigue. This airplane also had a fatigue crack in the aft end of the upper spar web. [Inspections of the upper spar web are required by AD 92–02–08, Amendment 39–8144 (57 FR 3931, February 3, 1992), in accordance with McDonnell Douglas Report Number L26–012, "DC–10 Supplemental Inspection Document (SID)." That document defines this area as Principal Structural Element (PSE) numbers 54.10.021 and 54.10.022.]

Cracking in the wing pylon aft bulkhead and upper spar web, if not detected and corrected in a timely manner, could lead to failure of the wing pylon aft bulkhead and subsequent separation of the engine and pylon from the airplane.

The FAA has reviewed and approved McDonnell Douglas DC–10 Alert Service Bulletin A54–106, dated July 9, 1992, that describes procedures for visually inspecting the left and right wing pylon aft bulkhead and upper spar web to detect cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other Model DC–10 series airplanes of the same type design, this AD is being issued to prevent failure of the wing pylon aft bulkhead and subsequent separation of the engine and pylon from the airplane. This AD requires a one-time visual inspection to detect fatigue cracks of the left and right wing pylon aft bulkhead and upper spar web. The inspections are required to be accomplished in accordance with the service bulletin described previously. If cracks are detected in the wing pylon aft bulkhead, operators must replace that bulkhead. If cracks are detected in the upper spar web, operators must repair them in accordance with a method approved by the FAA. Additionally, operators are required to submit a report of their inspection findings to the FAA.

Airplanes that previously have been inspected within the last 45 days in accordance with paragraph (g)1. of AD 80–11–05 R1, Amendment 39–3981, are not required to be inspected in accordance with this AD. Paragraph (g)1. of AD 80–11–05 R1 requires that a schedule for repetitive visual and eddy current inspections of the pylon aft bulkhead be incorporated into operators' maintenance programs as an amendment to the operations specifications.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **"ADDRESSES."** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–139–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–17–13. McDonnell Douglas: Amendment 39–8342. Docket 92–NM–139–AD.

Applicability: Model DC-10-10, -15, -30, -40, and KC-10 (military) series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the wing pylon aft bulkhead and subsequent separation of the engine and pylon from the airplane, accomplish the following:

(a) Except as provided by paragraph (b) of this AD: Prior to or upon the accumulation of 4,000 total flight cycles, or within 10 days after the effective date of this AD, whichever occurs later, visually inspect the left and right wing pylon aft bulkhead and the upper spar web to detect cracks, in accordance with McDonnell Douglas DC-10 Alert Service Bulletin A54-106, dated July 9, 1992.

(b) The inspection specified in paragraph (a) of this AD is not required to be accomplished on airplanes on which a visual inspection of the left and right wing pylon aft bulkhead and the upper spar web has been accomplished within 45 days prior to the effective date of this AD, in accordance with one of the methods specified in either paragraph (b)(1) or (b)(2) of this AD:

(1) The inspection method specified in McDonell Douglas DC-10 Alert Service Bulletin A54-106, dated July 9, 1992: or

(2) The inspection required by paragraph (g)1. of AD 80-11-05 R1 (Amendment 39-3981).

(c) If any cracks are found in the wing pylon aft bulkhead, prior to further flight, replace the wing pylon aft bulkhead in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) If any cracks are found in the upper spar web, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) Submit a report of inspection findings to the Manager, Los Angeles ACO, 3229 East Spring Street, Long Beach, California 90806-2425, [fax (310) 988-5210], at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspection shall be done in accordance with McDonnell Douglas DC-10 Alert Service Bulletin A54-106, dated July 9, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, Attention: Business Unit Manager, Technical Publications & Technical Administrative Support C1-L5B (56-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700 Washington, DC.

(i) This amendment becomes effective on September 1, 1992.

Issued in Renton, Washington, on July 24, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19488 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-102-AD; Amendment 39-8322; AD 92-16-13]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnel Douglas Model MD-11 series airplanes. This action requires replacing the aisle light transformer. This amendment is prompted by an investigation which revealed that the currently installed transformer for the mid cabin aisle light is underrated for actual load conditions. The actions specified in this AD are intended to prevent the transformer for the mid cabin aisle light from overheating. An overheated transformer potentially could cause a fire at the transformer and cause smoke to enter the passenger cabin.

DATES: Effective September 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-102-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brett E. Portwood, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-132L, FAA Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5347; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: Analysis conducted by the manufacturer has revealed that the transformer for the mid cabin aisle light on Model MD-11 series airplanes is underrated for actual load conditions. Subsequent investigation revealed that the currently installed transformer will not provide continuous power for a 248 volt/amps load requirement; this situation could cause the transformer to overheat. (However, there have been no in-service instances in which the transformer for the mid cabin aisle light has overheated.) An overheated transformer, if not corrected, potentially could cause a fire at the transformer and cause smoke to enter the passenger cabin.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 33-23, dated May 29, 1992, and Revision 1, dated July 1, 1992, both of which describe procedures for replacing the

aisle light transformer with one of higher voltage/amperage. Replacing the transformer with a 300 volt/amps transformer will meet necessary load requirements and minimize potential transformer failure. This modification will be incorporated prior to delivery on all Model MD–11 airplanes beginning with fuselage number 507 and subsequent.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent the transformer for the mid cabin aisle light from overheating. This AD requires replacing the transformer for the mid cabin aisle light with one of higher voltage/amperage. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–102–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–16–13. McDonnell Douglas: Amendment 39–8322. Docket 92–NM–102–AD.

Applicability: Model MD–11 series airplanes; serial numbers 48407 through 48414, 48416 through 48421, 48426 through 48429, 48434 through 48437, 48443 through 48461, 48472 through 48475, 48481, 48484 through 48485, 48487, 48489 through 48491, 48495 through 48498, 48499 through 48500, 48505, and 48527; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the transformer for the mid cabin aisle light from overheating, accomplish the following:

(a) Within 30 days after the effective date of this AD, replace the currently installed transformer for the mid cabin aisle light, part number 17093, with a transformer having part number 16753, in accordance with McDonnell Douglas Service Bulletin 33–23, dated May 29, 1992, or Revision 1, dated July 1, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with McDonnell Douglas Service Bulletin 33–23, dated May 29, 1992; or McDonnell Douglas Service Bulletin 33–23, Revision 1, dated July 1, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane directorate, Los Angeles ACO, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 1, 1992.

Issued in Renton, Washington, on July 15, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19489 Filed 8–14–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92-NM-116-AD; Amendment 39-8324; AD 92-16-15]

Airworthiness Directives; Scott Aviation Oxygen Mask Plug-In Connectors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Scott Aviation oxygen mask plug-in connectors. This action requires a one-time inspection to detect the presence of an over-sized diameter of the probe portion of oxygen mask plug-in connectors, and replacement, if necessary. This amendment is prompted by reports that plug-in connectors do not fully enter the fitting on portable emergency oxygen bottles, preventing the flow of emergency oxygen through face masks. The actions specified in this AD are intended to prevent a lack of oxygen flow from portable emergency oxygen bottles when these connectors are used to plug in face masks.

DATES: Effective September 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-116-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Scott Aviation, 225 Erie Street, Lancaster, New York 14086. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California 90806-2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Los Angeles ACO, Systems and Equipment Branch, ANM-131L, FAA, Transport Airplane Directorate, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5336; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: The FAA recently has received reports of discrepant probe diameters on oxygen mask plug-in connectors, Part No. 289-57, manufactured by Scott Aviation. One report stemmed from an occurrence that took place in flight, when a passenger required emergency oxygen. Eight portable oxygen bottles were tried; three bottles would not function at all. Investigation of this occurrence revealed that the diameter of the probe portion of the oxygen mask plug-in connectors was over-sized. In each instance, the plug-in connector did not fully enter the fitting on the oxygen bottle, preventing the flow of oxygen into the mask. This condition, if not corrected, could result in a lack of oxygen flow from portable emergency oxygen bottles when these connectors are used to plug in face masks.

The FAA has reviewed and approved Scott Aviation Service Bulletin 289-35-15, dated April 27, 1992; and Service Bulletin 289-35-15, Revision 1, dated June 12, 1992; that describe procedures for a one-time inspection to detect the presence of an over-sized diameter of the probe portion of oxygen mask plug-in connectors, and replacement of discrepant connectors. The plug-in connector, Part No. 289-57, is identified by the words "SCOTT" or "SIERRA" on one side, and "289-57" on the other side. The connector color is natural (white). The service bulletin recommends that plug-in connector parts that pass the inspection be marked "OK," using a permanent marker, on the rear of the connector. The manufacturer has advised that this problem has been corrected on plug-in connectors manufactured currently. The new connectors are light green in color.

Since an unsafe condition has been identified that is likely to exist or develop on other components of the same design installed on transport category airplanes, this AD is being issued to prevent a lack of oxygen flow from portable emergency oxygen bottles. This AD requires a one-time inspection to detect the presence of an over-sized diameter of the probe portion of oxygen mask plug-in connectors, and replacement of discrepant connectors with connectors of the correct size. This AD also requires that plug-in connector parts that pass the inspection be marked "OK." The actions are required to be accomplished in accordance with the service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **"ADDRESSES."** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-116-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must

be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-15. Scott Aviation: Amendment 39-8324. Docket 92-NM-116-AD.

Applicability: Scott Aviation Oxygen Mask Plug-In Connectors, Part Number 289-57, as installed in, but not limited to Boeing Model 727, 737, 747, 757, and 767 series airplanes; McDonnell Douglas Model DC-8, DC-9-80 (MD-80), and DC-10 series airplanes; and Fokker Model F-28 and F-100 series airplanes; certificated in any category.

Note: The constant-flow oxygen masks to which the subject connectors might be fitted include, but are necessarily limited to, the following Scott Part Numbers: 289-127-5, 289-601-34, 289-601-35, and 289-601-234.

Compliance: Required as indicated, unless accomplished previously.

To prevent a lack of oxygen flow from portable emergency oxygen bottles due to discrepant oxygen mask plug-in connectors, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time inspection to detect the presence of an over-sized diameter of the probe portion on the oxygen mask plug-in connector, Part Number 289-57, in accordance with Scott Aviation Service Bulletin 289-35-15, dated April 27, 1992, or Revision 1, dated June 12, 1992.

(b) If the probe portion on the oxygen mask plug-in connector is found to be over-sized as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace the discrepant connector in accordance with Scott Aviation Service Bulletin 289-35-15, dated April 27, 1992, or Revision 1, dated June 12, 1992.

(c) If the probe portion on the oxygen mask plug-in connector is not found to be over-sized as a result of the inspection required by paragraph (a) of this AD, prior to further flight, write the word "OK" on the rear of the connector in accordance with Scott Aviation Service Bulletin 289-35-15, dated April 27, 1992, or Revision 1, dated June 12, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with Scott Aviation Service Bulletin 289-35-15, dated April 27, 1992; or Scott Aviation Service Bulletin 289-35-15, Revision 1, dated June 12, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Scott Aviation, 225 Erie Street, Lancaster, New York 14086. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3229 E. Spring Street, Long Beach, California 90806-2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 1, 1992.

Issued in Renton, Washington, on July 15, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19486 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-CE-07-AD; Amendment 39-8352; 92-18-08]

Airworthiness Directives; Bendix/King KAP 150/KFC 150 Flight Control Systems Installed on Piper Aircraft Corporation Models PA-46-310P and PA-46-350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bendix/King KAP 150/KFC 150 Flight Control Systems installed on certain Piper Aircraft Corporation (Piper) Models PA-46-310P (Malibu) and PA-46-350P (Mirage) airplanes. This action requires the installation of a pitch servo cover kit. The Federal Aviation Administration (FAA) has received two reports where corrosion was found on the electronic circuit board of the affected flight control systems. The actions specified by this AD are intended to prevent moisture from entering the electronic circuit board through the pitch servo, which could possibly lead to undesired movement of the elevator.

DATES: Effective October 2, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 2, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from Bendix/King, Product Support Department, 400 N. Rogers Road, Olathe, Kansas 66062-0212. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Vassalli, Aerospace Engineer, Systems and Equipment Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4132; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to Bendix/King KAP 150/KFC 150 Flight Control Systems installed on certain Piper Models PA-46-310P and PA-46-350P airplanes was published in the Federal Register on March 2, 1992 (57 FR 7332). The action proposed the installation of a pitch servo kit, part number 050-3007-0000, in accordance with the instructions in Bendix/King Installation Bulletin No. 312, dated March 19, 1990.

The proposed AD is only applicable to the pitch servo cover installation and does not apply to the yaw servo cover installation that is referenced in Bendix/King Installation Bulletin No. 312. The FAA has determined that failure of the

yaw servo would not result in an unsafe condition.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter was in favor of the proposed AD. The other commenter, who is an operator of one of the affected airplanes, feels that the proposed AD is unjustified because the operator has never found moisture or corrosion in the electronic circuit board of the operator's airplane. The FAA does not concur that the proposed AD is unjustified. While the FAA acknowledges that this operator may not have experienced this problem as yet, the FAA issues airworthiness directives based upon unsafe conditions that not only exist but that are likely to develop in certain airplanes. Since two reports of corrosion in the electronic circuit board caused by moisture entering through the pitch servo have been received, the FAA has determined that the AD as proposed is justified.

No comments have been received on the FAA's determination of the cost of the proposed AD to the public.

After careful review of all available information including the comments discussed above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The compliance time for this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described by this AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service. In addition, the utilization rate of the affected airplanes varies throughout the fleet. For example, one operator may utilize the airplane 50 hours TIS in one week, while another operator may not operate the airplane 50 hours TIS in one month. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours time-in-service is utilized.

The FAA estimates that 233 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $260 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,025. Bendix/King reports that it has sold 297 kits. Based on this information, the FAA estimates that as many as 50 percent of the affected airplanes have been modified, which greatly reduces the cost impact of this action.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

92-18-08 Bendix/King: Amendment 39-8352; Docket No. 92-CE-07-AD.

Applicability: KAP 150/KFC 150 Flight Control Systems installed on Piper Models PA-46-310P and PA-46-350P airplanes, certificated in any category.

Compliance: Required within the next 90 calendar days after the effective date of this AD, unless already accomplished.

To prevent moisture from entering the electronic circuit board through the pitch servo, which could possibly lead to undesired movement of the elevator, accomplish the following:

(a) Install a pitch servo cover kit, part number 050-03007-0000, in accordance with the instructions in Bendix/King Installation Bulletin No. 312, dated March 19, 1990.

Note 1: Installation of the yaw servo cover kit, part number 050-03006-0000, which is referenced in Bendix/King Installation Bulletin No. 312, is not required by this AD action.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) The installation required by this AD shall be done in accordance with Bendix/King Installation Bulletin No. 312, dated March 19, 1990. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bendix/King, Product Support Department, 400 N. Rogers Road, Olathe, Kansas 66062-0212. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-8352) becomes effective on October 2, 1992.

Issued in Kansas City, Missouri, on August 10, 1992.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19540 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-CE-06-AD; Amendment 39-8351; 92-18-07]

Airworthiness Directives; Fairchild Aircraft (formerly Swearingen Aviation Corporation) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 91-23-04, which currently requires a one-time modification of the engine power lever flight idle detent arms and cover assembly on certain Fairchild Aircraft SA226 and SA227 series airplanes. SA226 series service information that is required to accomplish AD 91-23-04 has been updated, and the Federal Aviation Administration (FAA) has determined that the actions of AD 91-23-04 should be accomplished in accordance with the revised service information. The actions specified by this AD are intended to prevent improper operation of the engine power lever flight idle detent arms, which could result in loss of control of the airplane.

DATES: Effective October 2, 1992.

The incorporation by reference of Fairchild Service Bulletin No. 226-76-008, issued January 15, 1991, revised December 17, 1991, listed in the regulations is approved by the Director of the Federal Register as of October 2, 1992.

The incorporation by reference of Fairchild Service Bulletin No. 227-76-002, issued January 15, 1991, revised May 9, 1991, listed in the regulations was previously approved by the Director of the Federal Register as of December 10, 1991.

ADDRESSES: Service information that is applicable to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Alma Ramirez-Hodge, Aerospace Engineer, Fort Worth Airplane Certification Office, FAA, Fort Worth, Texas 76193-0150; Telephone (817) 624-5147.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Fairchild Aircraft SA226 and SA227 series airplanes was published in the Federal Register on March 11, 1992 (57 FR 8585). The action proposed to supersede AD 91-23-04 with a new AD that would (1) retain the modification of the engine power lever flight idle detent arms and cover assembly required by AD 91-23-04; and (2) incorporate Fairchild Service Bulletin No. 226-76-008, issued January 15, 1991, revised December 17, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 770 airplanes in the U.S. registry will be affected by this AD, that it would take approximately 8 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $214 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $503,580. AD 90-13-12, which will be superseded by this action, required the same actions except for a revision in the service information. Therefore, there would be no additional cost impact of the required AD on U.S. operators than that which is already required by AD 90-13-12.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91-23-04, Amendment 39-8073 (56 FR 57236, November 8, 1991), and adding the following new AD:

92-18-07 Fairchild Aircraft (formerly Swearingen Aircraft Corporation): Amendment 39-8351; Docket No. 92-CE-06-AD. Supersedes AD 91-23-04, Amendment 39-8073.

Applicability: The following model and serial numbered airplanes, certificated in any category:

Model	Serial Nos.
SA226-T	T201 through T275, and T277 through T291.
SA226-T(B)	T(B)276, and T(B)292 through T(B)417.
SA226-AT	AT001 through AT074.
SA226-TC	TC201 through TC419.
SA227-TT	TT421 through TT541.
SA227-AT	AT423 through AT695.
SA227-AC	AC406, AC415, AC416, and AC420 through AC777.
SA227-BC	BC762, BC764, BC766, and BC777.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of control of the airplane because of improper operation of the power lever flight idle detent arms, accomplish the following:

(a) Modify the power lever detent arms and cover assembly in accordance with the instructions in Fairchild Service Bulletin (SB) No. 226-76-008, issued January 15, 1991, revised December 17, 1991; or Fairchild SB

No. 227–76–002, issued January 15, 1991, revised May 9, 1991, whichever is applicable.

(b) If the modification required by paragraph (a) of this AD has been accomplished in accordance with either Fairchild SB No. 226–76–008 or Fairchild SB No. 227–76–002, both issued January 15, 1991, revised May 9, 1991, whichever is applicable (superseded AD 91–23–04), then no further action is required by this AD.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, FAA, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Aircraft Certification Office.

(e) The modification required by this AD shall be done in accordance with Fairchild Service Bulletin No. 226–76–008, issued January 15, 1991, revised December 17, 1991; or Fairchild Service Bulletin No. 227–76–002, issued January 15, 1991, revised May 9, 1991. The incorporation by reference of Fairchild Service Bulletin No. 226–76–008, issued January 15, 1991, revised December 17, 1991, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The incorporation by reference of Fairchild Service Bulletin No. 227–76–002, issued January 15, 1991, revised May 9, 1991, was previously approved by the Director of the Federal Register on December 10, 1991, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8351) supersedes AD 91–23–04, Amendment 39–8073.

(g) This amendment (39–8351) becomes effective on October 2, 1992.

Issued in Kansas City, Missouri, on August 3, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19539 Filed 8–14–92; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Furnaces

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for furnaces will remain in effect until new ranges are published.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The ranges of efficiencies for furnaces have not changed by as much as 15% since the last publication. Therefore, the ranges published on March 1, 1990 remain in effect until new ranges are published.

EFFECTIVE DATE: August 17, 1992.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule [1] covering seven appliance categories, including furnaces. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all furnaces presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a covered product is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then on each page of the catalog that lists the product shall be included the range of estimated annual energy costs for the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type.[2] Because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is subject to change.

To keep the required information in line with any changes that may occur, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect until new ranges are published.

The annual reports for furnaces have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on March 1, 1990.[3]

In consideration of the foregoing, the present ranges for furnaces will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92–19515 Filed 8–14–92; 8:45 am]

BILLING CODE 6750–01–M

[1] 44 FR 66466, 16 CFR part 305 (Nov. 19, 1979).

[2] Reports for furnaces are due by May 1.

[3] 55 FR 7302.

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Property

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend postal regulations to prohibit drivers who have no driver's license, or who have a revoked or suspended driver's license or privilege to drive, from driving vehicles in or on limited-access postal property, such as a postal garage.

EFFECTIVE DATE: August 17, 1992.

FOR FURTHER INFORMATION CONTACT: H.J. Bauman, (202) 268–4415.

SUPPLEMENTARY INFORMATION: State laws on driving without a license, or with a suspended or revoked license or privilege to drive, generally only apply to public accessed areas, which do not include areas of postal property with limited access. The same situation occurs with respect to vehicle registration, license, and tag laws. When a driver commits these types of violations on limited-access postal property, the state law does not apply, and currently no postal regulation prohibits these acts. Part 232 is amended by adding two new subsections specifically requiring valid licenses, tags, and permits. This change will permit Postal Police Officers to charge these types of violations on limited-access postal property.

List of Subjects in 39 CFR Part 232

Law enforcement, Postal Service.

Accordingly, title 39 CFR, is amended as follows:

PART 232—CONDUCT ON POSTAL PROPERTY

1. The authority citation for part 232 is revised to read as follows:

Authority: 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c, sec. 613, Treasury, Postal Service, and General Government Appropriations Act, 1992, Pub. L. 102–141, 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844.

2. Section 232.1 is amended by redesignating existing paragraphs (k)(1), (k)(2), and (k)(3) as paragraphs (k)(3), (k)(4), and (k)(5) respectively, and by adding new paragraphs (k)(1) and (k)(2) to read as follows:

§ 232.1 Conduct on Postal property.

* * * * *

(k) * * *

(1) Drivers of all vehicles in or on property shall be in possession of a current and valid state or territory issued driver's license and vehicle registration, and the vehicle shall display all current and valid tags and licenses required by the jurisdiction in which it is registered.

(2) Drivers who have had their privilege or license to drive suspended or revoked by any state or territory shall not drive any vehicle in or on property during such period of suspension or revocation.

* * * * *

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92–19501 Filed 8–14–92; 8:45 am]

BILLING CODE 7710–12–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

45 CFR Part 1180

Institute of Museum Services; General Operating Support for Museums

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final regulations.

SUMMARY: The Institute of Museum Services amends its regulations governing the duration of the grant period for General Operating Support awards. IMS establishes that the grant period be limited to two years and that a successful applicant to the General Operating Support program in one Federal fiscal year will not be eligible to apply for an additional General Operating Support award in the immediately following Federal fiscal year. IMS establishes that the maximum award amount for fiscal year 1993 and following years be set at 15 percent of the museum's prior year operating income or $112,500 whichever is less, but that a museum may receive a minimum award of $7,500, subject to statutory limitations. The award amount may be obligated by the grantee over a period of two years.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Rebecca W. Danvers, Program Director; Telephone: 202/786–0539; Deaf and hearing impaired individuals may call 202/786–9136 for TDD services.

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976, and was amended in 1980, 1982, 1984, 1985, and 1990. The purpose of the Act as stated in section 202, is as follows:

> To encourage and assist museums in their educational role * * *; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public.

An award for General Operating Support may be used to carry out such activities.

2. The Need for the Amendment

The IMS regulations for General Operating Support contain provisions regarding the duration of the grant period and the amount of the award. Since 1978, the grant period has been limited to one year. Every applicant, whether successful or not in any given fiscal year, is required to reapply for General Operating Support in the following fiscal year. As a result, museums had only a one-year period in which to obligate the funds and could not predict that funds would be available beyond that one-year period. IMS establishes with these amendments that the grant period be extended to two years and that successful applicants in one Federal fiscal year not be eligible to apply in the following Federal fiscal year.

IMS establishes that an applicant may receive 15 percent of its most recently completed fiscal year operating income up to a maximum of $112,500, to be obligated over a period of two years.

3. Potential Benefits

The changes in the General Operating Support program grow out of a comprehensive 1990 study of that program commissioned by IMS. The study concluded that a concern that their chances for funding are limited is a significant reason that museums decline to participate in the program. To address these concerns, IMS will award General Operating Support grants on a two-year basis with the provision that a successful museum will not be eligible to apply for a grant during the Federal fiscal year following the Federal fiscal year in which the museum receives an award. At the same time, the ceiling on General Operating Support grants will be increased to $112,500 or 15 percent of the museum's prior year operating income, whichever is less, to reflect the fact that a museum is receiving an award to cover a two-year period. (The minimum award will be increased from $5,000 to $7,500, subject to statutory limitations.) IMS anticipates a number

of benefits from these changes in grant procedures:

(1) Museums that would receive awards in two succeeding Federal fiscal years are relieved of the burden of filing an application in the second year.

(2) These museums will have a longer period to plan the use of their funds.

(3) These museums will have a longer period to use their funds.

(4) For museums that are reluctant to apply because of the perception that the chances of funding are limited, the new procedures will eliminate from competition in the second year a number of museums that otherwise would have competed for grants, thus expanding funding opportunities for other museums.

(5) The new procedures may encourage underserved museums to participate in the General Operating Support program.

IMS recognizes that the changes in the grant procedures, will result in a smaller number of GOS awards on an annual basis and that a limited number of museums that receive General Operating Support awards each year under the current procedures may obtain a smaller amount over the two-year grant period if they continue to be successful in obtaining awards. IMS believes that the substantial benefits of the proposed changes to the museum community as a whole far outweigh these effects.

4. Response to Public Comment

A notice proposing revised regulations for the museum services program was published on February 21, 1992. 57 FR 6208. The preamble to the notice of proposed rulemaking contained an amendment by amendment analysis explaining the purpose of each amendment. 57 FR 6208. Public comment was invited on the proposed changes. 57 FR 6208. All comments received were of great value in the consideration of any program changes. The Institute of Museum Services wishes to extend its thanks to all those participants in the museum community.

Of the 101 comments received, 73 responses (72%) were in full support with the changes given. Comments are summarized below. The comments most commonly cited were that the changes will result in (1) a fairer distribution of GOS money to deserving museums, (2) a major savings in time to prepare application, and (3) increased financial stability to grantees.

The Institute agrees with the observations of these commenters who supported the changes and has made the changes final in the regulatory amendments set forth below.

In addition, IMS received 13 comments (13 percent) that opposed the proposed changes in the GOS regulations on a variety of grounds. These comments and the responses of IMS to them are set forth below:

Comment: One commenter questioned whether the changes in the GOS award system run counter to the original intent of the Museum Services Act to support institutional excellence.

Response: The changes in the length of the GOS award period made by the final regulations do not constitute a change in basic IMS policy with respect to GOS and are consistent with the original intent of the Act. Since the commencement of the GOS program and the launching of the Institute, IMS has devoted the preponderance of its resources to GOS, has considered GOS applications in accordance with broad funding criteria that emphasize institutional operations and high quality in museum services, and has evaluated the institution as a whole in making awards. The present changes in award procedures do not alter these basic arrangements or make changes in the IMS regulations affecting these matters. On the contrary, the changes made in the funding period and the ceiling provisions are designed to provide additional flexibility to museums and to broaden, to the extent possible, participation in the program.

Comment: A number of comments expressed the concern that the proposed changes could lead to hard year-easy year cycle where the first year's successful applicant were removed from the following year's competition.

Response: The 1990 study upon which the changes are based found that IMS applications are generally of high quality. IMS is convinced, on the basis of the report as well as its own observations, that, when the changes are implemented, a GOS grant will remain as a mark of prestige under the new system. Indeed, it is expected that the GOS program will reach new applicants of high quality that have not been previously funded. As indicated, the basic funding criteria have not been altered by the changes, and it is these funding criteria, administered through a rigorous peer review system, that ensure the continued high quality of IMS applications. Accordingly, IMS does not anticipate a set of easy years for its GOS applicants, particularly in view of its assessment that the GOS program has not in the past been able to reach many fine applicants.

Comments: Several commenters questioned the reduction in the level of IMS support in the sense that the new ceiling for the two year period is less than the aggregate for the single years under the current system.

Response: IMS believes that the revised ceiling will maintain a meaningful level of funding for successful museums while allowing for somewhat wider distribution of grants. Moreover, the modest reduction in the two year aggregate is designed to reflect in part the reduction in a museum's administrative burden in avoiding the need to file applications each year and the additional flexibility available in knowing in advance the amount of a GOS award over a two year period, knowledge designed to assist in longer range planning than is possible under the system in effect prior to the changes being made through this document. IMS has attempted to balance these considerations in the manner set forth in the regulations and believes that the balance is proper and reasonable and will strengthen the program for the reasons indicated.

Comment: A few commenters saw the changes as a substitute for larger appropriations that would meet the needs of museums for greater GOS support.

Response: The issue of funding levels is a legislative matter separate and apart from the development of regulations. IMS must conduct the GOS program within applicable budgetary constraints and use available funds as efficiently as possible to meet the purposes of the Act. This would be so even with larger appropriations. The objectives of the changes in the regulations—to achieve greater flexibility; enhance advance planning by museums; provide for increased stability for grantees; and reduce burden for museums in the preparation of applications—are all objectives that IMS would consider worth pursuing irrespective of the level of appropriations. That budgetary constraints may invite efforts to distribute available funds as broadly as possible is not a reason for IMS to abandon the proposed changes.

Comment: Several commenters questioned whether the motivation for the annual evaluation would be lost as a result of the changes. These and some other commenters expressed the view that the present system works well and should not be changed.

Response: While in general IMS believes that the current system has worked to the benefit of the museum community, IMS has a duty to seek improvements in that system for the benefit of that community. The 1990 study which it commissioned suggested changes along the lines of those made.

Moreover, the community itself, while generally supportive of the program, has sought constructive changes over a long period of time particularly with respect to the issue of broader distribution of GOS funds among a somewhat wider spectrum of museums. IMS has therefore considered that it had a duty to propose the changes which evidently meet with the approval of the large majority of the commenters. IMS does not believe that the benefits of the evaluation will be impaired as a result of the changes. It believes that these changes will better serve the broader museum community and will preserve the beneficial aspects of the program as presently constructed. As indicated above, IMS, with the policy direction of the Board, has concluded that the substantial benefits of the changes will outweigh the effects described by the commenters who expressed concerns.

Accordingly, in keeping with the proposed regulations, the final regulations set forth below amend the sections in question.

5. Executive Order 12291

This amendment has been reviewed in accordance with Executive Order 12291. It is classified as non-major because it does not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Director certifies that the amendment will not have a significant economic impact on a substantial number of museums. The amendment will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, it will not have significant economic impact on the entities affected, because it does not impose excessive regulatory burdens or require unnecessary Federal supervision.

6. Paperwork Reduction Act of 1980

This regulation does not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511)

List of Subjects in 45 CFR Part 1180

Grant programs—education, Museums, Nonprofit organizations.

Part 1180 of title 45 of the Code of Federal Regulations is revised as follows:

PART 1180—[AMENDED]

1. The authority citation for part 1180 continues to read as follows:

Authority: 20 U.S.C. 961–69, unless otherwise noted.

2. A new § 1180.8 is added to read as follows:

§ 1180.8 Two-Year grant period.

(a) IMS makes General Operating Support grants for a period of twenty-four months beginning with the first month of the grant period.

(b) A museum that receives a General Operating Support grant in a Federal fiscal year may not apply for an additional General Operating Support grant in the succeeding Federal fiscal year.

Example. A museum applies for a General Operating Support grant in Federal fiscal year 1993. The museum receives a grant that it may use during the applicable 24-month grant period. The museum may not apply for an additional General Operating Support grant in Federal fiscal year 1994.

3. Section 1180.9 is revised to read as follows:

§ 1180.9 Limitation on amount of General Operating Support grants.

(a) *General rule.* IMS makes General Operating Support grants in an amount not to exceed the lesser of:

(1) the ceiling amount established under paragraph (b);

(2)(i) 15 percent of the applicant museum's non-Federal operating income for its most recently completed fiscal year that is prior to the Federal fiscal year in which the application is filed; or

(ii) $7,500, if larger.

(b) *Ceiling amount.* The ceiling amount of a General Operating Support grant will be established through a notice published in the **Federal Register.** Beginning in FY 1993, the ceiling amount is $112,500.

(c) *Statutory requirement.* Under section 206(c) of the Act, IMS may not make a grant in excess of 50 percent of the annual cost of the program for which the grant is made. If the application of the $7,500 limitation in paragraph (a)(2) of this section causes a General Operating Support grant to exceed 50 percent of the museum's annual operating income for the grant period in question, IMS reduces the grant to that level in order to satisfy the statutory requirement.

(d) *Computation of non-Federal operating income.* For the purposes of this section, a museum may include in non-Federal operating income an amount reflecting the reasonable and conservative value of non-cash contributions to the museum in the applicable fiscal year.

Examples. The application of these rules is set forth in the following examples:

(1) In fiscal year 1993, a museum with calendar year 1991 operating income of $5,000,000 applies to IMS for a General Operating Support grant. Its application is approved. It may receive a grant of no more than $112,500, the lesser of $112,500 and $750,000 which is 15 percent of the museum's non-Federal operating income.

(2) In fiscal year 1993, a museum with calendar 1991 operating income of $700,000 applies to IMS for a General Operating Support grant. Its application is approved. It may receive a grant of no more than $105,000 the lesser of $112,500 and 15 percent of the operating income which is $105,000.

(3) In fiscal year 1993, a museum with calendar 1991 operating income of $40,000 applies to IMS for a General Operating Support grant. Its application is approved. It may receive a grant of no more than $7,500, the larger of $7,500 or 15 percent of the museum's operating income which is $6,000. The grant satisfies the requirement of paragraph (c) (and the statute) that it not exceed 50 percent of the museum's operating income for that year.

4. Section 1180.15 is revised to read as follows:

§ 1180.15 Duration of grants.

The grantee may use grant funds during the period specified in the grant document unless the grant is suspended or terminated. If the grantee needs additional time to complete the grant, the grantee may apply for an extension of the grant period without additional funds. The Director may approve this extension at his or her discretion.

5. Section 1180.16 is revised to read as follows:

§ 1180.16 Contributions, restricted accounts.

(a) For a particular fiscal year, and for one or more programs, the Board may determine that an amount equal to the amount to be awarded (or a percentage thereof) to an applicant under the Act must consist of non-Federal funds contributed to the museum in excess of the non-Federal funds contributed to the museum for its immediately preceding fiscal year.

(b) A museum shall maintain a restricted account for funds received under the Act.

6. Section 1180.20(b)(3) is revised to read as follows:

§ 1180.20 Guidelines and standards for conservation grants.

* * * * *

(b) * * *

(3) Section 1180.16(b), which provides for the maintenance of a restricted

account, does apply to conservation grants.

* * * * *

Susannah Simpson Kent,

Director, Institute of Museum Services.

[FR Doc. 92-19482 Filed 8-14-92; 8:45 am]

BILLING CODE 3137-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-103; RM-7973]

Radio Broadcasting Services; New London, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290C3 to New London, Missouri, in response to a petition filed by New London Broadcasting. See 57 FR 21055, May 18, 1992. The coordinates for Channel 290C3 are 39-41-44 and 91-20-10. There is a site restriction 13.5 kilometers (8.4 miles) north of the community. With this action, this proceeding is terminated.

DATES: *Effective:* September 24, 1992. The window period for filing applications for Channel 290C3 at New London will open on September 25, 1992, and close on October 26, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92-103, adopted July 22, 1992, and released August 11, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding New London, Channel 290C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-19477 Filed 8-14-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-7; RM-7879]

Radio Broadcasting Services; Scotland Neck and Pinetops, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WYAL Radio, Inc., substitutes Channel 238C3 for Channel 238A at Scotland Neck, North Carolina, reallots the channel to Pinetops, North Carolina, and modifies the construction permit of Station WWRT (FM) accordingly. See 57 FR 3159, January 28, 1992. Channel 238C3 will provide Pinetops with its first local-aural transmission service. Channel 238C3 can be allotted to Pinetops in compliance with the Commission's minimum distance separation requirements with a site restriction of 18 kilometers (11.1 miles) north to accommodate petitioner's desired transmitter site and avoid short-spacings to Stations WRNS, Channel 236C, Kinston, North Carolina, and WKML, Channel 239C, Lumberton, North Carolina, at coordinates North Latitude 35-55-54 and West Longitude 77-40-11. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-7, adopted July 21, 1992, and released August 11, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 238A, Scotland Neck and adding Pinetops, Channel 238C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-19462 Filed 8-14-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 920780-2180]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim rule; publication of Office of Management and Budget (OMB) control number and announcement of effectiveness of a collection-of-information requirement.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the effectiveness of a collection-of-information requirement, whereby any owner or operator of a shrimp trawler who wishes to use restricted tow times in lieu of turtle excluder devices (TEDs) within a small pre-designated area off the North Carolina coast is required to register with NMFS' Southeast Regional Office prior to their first fishing trip. This rule also publishes the applicable OMB control number.

EFFECTIVE DATE: Section 227.72(e)(8)(i), of the interim rule published July 29, 1992 (57 FR 33455), is effective August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Phil Williams, National Sea Turtle Coordinator, NMFS, at 301/713-2322 or Chuck Oravetz, Chief, Protected Species Program, Southeast Region, NMFS, at 813/893-3366.

SUPPLEMENTARY INFORMATION: An interim rule to allow limitations on tow times as an alternative to the requirement to use TEDs by shrimp trawlers in a restricted area off the coast

of North Carolina was published July 29, 1992 (57 FR 33455). Section 227.72 (e)(8)(i) of that rule requires owners or operators of shrimp trawls to contact the Southeast Regional Office at least 24 hours before their first fishing trip, following the effective date of this rule, to provide the name and official number of the vessel; the time and date of the telephone registration; the number of the state permit authorizing fishing in the restricted area; a statement that the owner or operator intends to trawl in the North Carolina restricted area using the limited tow times option; and the dates trawling operations in the North Carolina restricted area are expected to be conducted. Because that requirement constitutes a collection-of-information requirement subject to the Paperwork Reduction Act, it could not be enforced before OMB approval of the requirement. Delayed enforcement of § 227.72(e)(8)(i) was announced in the July 29, 1992, rule pending OMB approval. OMB has approved the collection-of-information requirement under OMB control number 0648–0267. Section 227.72(e)(8)(i) is effective August 14, 1992, and will be enforced from that date on.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: August 7, 1992.

Samuel W. McKeen,

Program Management Office.

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

For the reasons set forth in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

2. Section 227.72 is amended by revising paragraph (e)(8)(i) to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(8) *North Carolina restricted area*—(i) *Registration requirement.* Any owner or operator of a shrimp trawler (regardless of length) who wishes to trawl in the North Carolina restricted area, other than those who are in compliance with paragraph (e)(2) of this section, must register with the Southeast Regional Director, NMFS, at least 24 hours before the first fishing trip following the effective date of this rule by telephone at 813/893–3163 and providing the following information:

(A) The name and official number of the vessel;

(B) The time and date of the telephone registration;

(C) The number of the state permit authorizing fishing in the restricted area;

(D) A statement that the owner or operator intends to trawl in the North Carolina restricted area using the limited tow times option; and

(E) The dates trawling operations in the North Carolina restricted area are expected to be conducted.

* * * * *

[FR Doc. 92–19461 Filed 8–14–92; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Part 683

[Docket No. 920530–2192]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to extend for 6 years the moratorium on fishing in the Hancock Seamount fisheries under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). This rule is intended to ensure that fishing mortality in the exclusive economic zone (EEZ) will not contribute to further declines in the seamount groundfish stocks and may help foster a rebound of those stocks throughout their range. The seamount groundfish stocks are overfished, and if the moratorium is not extended and fishing resulted, the recovery of the stocks would be further threatened.

EFFECTIVE DATE: August 27, 1992.

ADDRESSES: Copies of the document requesting and supporting this action and the environmental impact statement prepared for the FMP imposing the initial Hancock Seamount fishery moratorium may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS at 310–980–4034; or Alvin Katekaru, NMFS, at 808–955–8831.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Western Pacific Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce in 1986 (51 FR 27413, July 31, 1986). The FMP established a moratorium on fishing for bottomfish and seamount groundfish (mainly pelagic armorhead and alfonsin) within the Hancock Seamount subarea of the EEZ due to the severely depressed status of the stocks. It was noted at the time that the range of the stocks extends beyond EEZ, and that action in the EEZ alone not ensure rebuilding of the stocks. Nonetheless, it was concluded that affirmative action in the EEZ was appropriate. The moratorium was designed to last for 6 years (i.e., until August 27, 1992), after which it was hoped that stocks would have rebounded in the EEZ to permit a fishery.

The FMP also provided a procedure (codified at 50 CFR 683.24) for changing the conservation and management measures through rulemaking rather than an FMP amendment.

NMFS has conducted periodic assessments of the stocks in the EEZ for the past 5 years and has concluded that the stocks have not recovered. In its annual report on the bottomfish and seamount groundfish fisheries for the 1990 fishing year, the Council's plan team indicated that the estimated current spawning potential ratio (SPR), which is a measure of the spawning biomass relative to the spawning biomass prior to the fishery, was only 1.0 percent, far below the threshold (SPR = 20 percent) established to define overfishing for bottomfish and seamount groundfish stocks. The catch per unit effort of pelagic armorhead in research fishing was at the lowest point since research fishing began in 1985. The team recommended that the Council request that the moratorium be extended indefinitely.

At its March 1992 meeting, the Council considered the information from the team and concluded that extension of the moratorium is warranted. The Council subsequently submitted a request for NMFS to take action under the framework procedure of the FMP. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has agreed that there is a sound basis for this request.

As discussed in the proposed rule (57 FR 26816, June 16, 1992), the rule extends the moratorium on harvest of bottomfish and seamount groundfish in the EEZ through August 31, 1998. The extension provides additional time for recovery of the stocks in the EEZ and may contribute to a recovery of the stocks throughout their range. NMFS will continue to monitor the status of the stocks and will advise the Council of its findings annually.

Comments and Responses

No comments were received on the proposed rule.

Classification

This rule is published under the authority of 50 CFR part 683 and was prepared at the request of the Council. The Assistant Administrator has determined that this final rule is necessary for the conservation and management of the western Pacific bottomfish and seamount groundfish fishery and is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

An environmental impact statement (EIS) was incorporated into the original FMP and included assessment of the impacts of the moratorium for the seamount groundfish fishery proposed and implemented at that time. There has been no change in the condition of the stocks and extension of the moratorium is within the range of alternatives considered in the EIS. Therefore, this action is categorically excluded from the requirement to prepare an environmental assessment in accordance with paragraph 6.02c.3.(f) of NOAA Administrative Order 216–6. A copy of the EIS is available from the Council (see **ADDRESSES**).

In a May 13, 1991, Biological Opinion analyzing the effects of the fishery on listed species and critical habitat, NMFS concluded that the FMP and the fisheries themselves, including the moratorium on the Hancock Seamount fishery, would not jeopardize the continued existence of any species listed under the Endangered Species Act or adversely affect any critical habitat for listed species. Extension of the moratorium for 6 years will not affect any listed species or any critical habitat in a manner not analyzed in that Biological Opinion.

The Assistant Administrator has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This conclusion is based on the original combined FMP/EIS, regulatory impact review, and the supplementary document prepared for this rule. Copies of the supporting documents are available from the Council (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

In order to afford maximum opportunity for public comment and participation, the Administrative Procedure Act (5 U.S.C. 553) requires that, generally, final rules be published not less than 30 days before they become effective. This 30-day period may be shortened or waived if the rulemaking agency publishes with the rule an explanation of what good cause justifies an earlier date. This rule extends the moratorium on the seamount groundfish fishery implemented by the FMP in 1986 and should become effective August 27, 1992, when the existing moratorium expires, in order to prevent a lapse in the management regime. The public comment period on the proposed rule ended on July 16, 1992, and although this final rule has been issued as expeditiously as possible, it is not possible to provide a full 30 days before the existing moratorium expires. Good cause is found for not providing the full 30 days because this final rule merely extends the existing moratorium on fishing in the Hancock Seamount fisheries, and to do otherwise would impair the overfished resource.

List of Subjects in 50 CFR Part 683

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 11, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 683 is amended as follows:

PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

1. The authority citation for part 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 683.23 is revised to read as follows:

§ 683.23 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 1998.

[FR Doc. 92–19528 Filed 8–14–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 159
Monday, August 17, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 140

[Docket No. PRM 50-54]

Public Citizen—Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM 50-54) from Daniel Borson on behalf of the Public Citizen. The petitioner requested that the NRC amend its regulations regarding the licensing of independent power producers to construct or operate commercial nuclear power reactors. The petition is being denied on the basis that current NRC regulations provide authority for the licensing of an Independent Power Producer (IPP)[1] should such an application be submitted and for a review of the applicant's financial qualifications to construct and operate a commercial power reactor.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3795.

SUPPLEMENTARY INFORMATION:

I. The Petition

In a letter dated November 22, 1989, Mr. Daniel Borson, on behalf of the Public Citizen, filed a petition for rulemaking with the NRC. The petition, which consisted of two parts, requested that: (1) NRC promulgate rules concerning the licensing of IPPs in general; and (2) these rules include specific criteria for financial qualifications for an IPP seeking a construction permit, or an operating license for a commercial nuclear power reactor.

II. Basis for Petitioners Request

Since all licensees of commercial nuclear power plants are presently regulated utilities, NRC regulations for financial qualification of licensees for the construction and operation of these facilities assume that local, State or Federal regulatory bodies will ensure that nuclear licensees have sufficient funds to safely operate their facilities. Regulated utilities have defined fixed markets for their electricity and usually are assured a set return on the amount of investment in plants which is included in the rate base. However, IPPs, on the other hand, must compete openly in the wholesale marketplace and may not have a steady supply of customers for their power. Consequently, while their rates are usually set by the Federal Energy Regulatory Commission (FERC), if IPPs fail to sell all the electricity they produce, or if their plants fail to produce enough electricity, they may not make a profit. Therefore, the long term financial stability of an IPP is less certain than that of a regulated utility. This potentially precarious financial position may adversely affect the accrual of decommissioning funds, the promptness of necessary maintenance and repairs, the payment of waste fees, and the ability to pay funds in the event of an accident at any commercial nuclear plant as specified under the Price-Anderson Act. Currently, there are no regulations specifically addressing the licensing of IPPs or the transfer of licenses to IPPs.

In light of the above, Public Citizen petitioned NRC to require an affirmative showing of financial qualification by an IPP seeking a construction permit, an operating license, or a transfer of license. Additionally, Public Citizen requested that the specific financial qualifications be made part of the IPPs application for a license. The financial questions should include but not be limited to requiring the IPP to:

Establish a procedure to ensure that sufficient funds will be available for payment to the Nuclear Waste Fund established by the Nuclear Waste Policy Act.

Establish a mechanism to assure that the money which the Price-Anderson Act requires licensees to pay in the event of an accident at any commercial nuclear plant would be available when needed.

Pre-pay into an external fund the cost of decommissioning the reactor, or demonstrate the absolute assurance by a financial institution that sufficient funds will be available for decommissioning.

III. Public Comments on the Petition

A notice of receipt of the petition for rulemaking was published in the **Federal Register** on March 12, 1990 (55 FR 9137). Interested persons were invited to submit written comments or suggestions concerning the petition by May 11, 1990. The NRC received 17 comments in response to the notice: 9 from public utilities/industry representatives, 2 from public corporations, 2 from State agencies, 2 from citizens groups, 1 from a private citizen, and 1 from the Department of Energy (DOE). The majority of the commenters (13) opposed granting the petition. The main reasons cited by the commenters who were opposed to the petition were:

The DOE, the New York Power Authority, and others, stated that they believed that current NRC regulations are sufficient to recognize an entity other than an electrical utility as a licensee for a nuclear power plant. Further, they stated that part 50 contains language that allows the Commission to obtain information on the financial integrity of an IPP to assure itself that the IPP is qualified to build, operate, and provide for other financial obligations in

[1] The staff views an independent power producer as one example of a class of non-utility applicants. The staff believes that any action should include all non-utility applicants which, at present, may include several different entities with differing names, corporate structures, and operating characteristics. For example, IPPs, Affiliated Power Producers (APPs), Qualifying Facilities (QFs), and Exempt Wholesale Generators (EWGs). Not all of these entities are IPPs; however, all of them would be non-utility applicants if they were to apply for a license to construct or operate a reactor.

connection with the plant for the life of the license.

The Nuclear Management and Resources Council (NUMARC) as well as several utilities pointed out that the petitioner failed to indicate any specific areas of the regulations that required change or to provide any arguments to justify the need for additional regulations at this time.

Financial qualifications for licensees are addressed in the current regulations (10 CFR parts 50 and 140) and apply to all applicants.

A private citizen pointed out that the promulgation of additional rules is not required to ensure the protection of the health and safety of the public.

Several commenters pointed out that any lender or investor supporting an application from an IPP would clearly insist on adequate financial arrangements address all significant contingencies.

The Palisades Generating Company pointed out that the IPP concept has not yet been applied to nuclear plants; even in the non-nuclear segment of the electric industry, the concept is still evolving.

The remaining four commenters were in favor of granting the petition. The reasons provided for supporting the petition are as follows:

The State of Illinois stated that specific financial qualifications should be made a part of the application for an operating license. Satisfactory monetary provisions for plant decommissioning, Price-Anderson insurance, and disposal of radioactive waste must be assured. IPPs should have no less culpability than a regulated utility.

The Ohio Citizens for Responsible Energy stated that NRC has developed no substantive rules or a body of case law to address a situation such as the completion and operation of a nuclear reactor such as Perry 2 by an IPP. Stringent financial qualification review and standards are essential to ensure that the IPPs have sufficient funds to cover appropriate expenses.

The Alabama Public Service Commission stated that the assumption should not be made that current regulations would encompass new entrants such as IPPs. Further, IPPs need to know what will be required by the NRC to determine whether to construct or operate a nuclear reactor and be reasonably sure of making a profit.

Public Citizen sent in a letter to NRC and reiterated essentially what had been stated in their petition.

IV. Reasons for Denial

Upon receipt of the petition from Public Citizen, the staff examined the petition in detail to determine which specific regulations the petitioner believed should be amended to address the licensing of an IPP, or which regulations were inadequate to determine the financial qualifications of an IPP. However, the petitioner provided no specific reference to the regulations in 10 CFR chapter I that should be amended.

The staff then examined each of the 17 comments submitted by the public on the petition. None of the four commenters who favored granting the petition provided any reference to the specific regulations which should be amended by rulemaking. One of the commenters stated that specific financial qualifications should be made a part of the application for an operating license and that satisfactory monetary provisions for plant decommissioning, Price-Anderson insurance, and disposal of radioactive waste should be assured. The staff agrees that this type of information is important to any license application and such information will be reviewed in detail during any license review of an IPP. Another commenter stated that IPPs should have no less culpability than a regulated utility. The staff also agrees with this statement. Another commenter stated that NRC has not developed a "body of case law" to address IPPs. NRC has not developed a "body of case law" because an IPP has yet to submit an application for a construction permit or operating license, and the staff believes the current regulations provide authority to review an application by an IPP should one be submitted.

In its petition, Public Citizen has not presented any tangible evidence as to why or how the NRC regulations are inadequate. Nor does the Public Citizen demonstrate or state how the NRC would fail to apply existing regulations on a case-by-case basis to the circumstances of an IPP before making the necessary public health and safety findings prior to the issuance of any permit or license. The staff agrees with the comments of the DOE, NUMARC, and others that the current regulations in 10 CFR Part 50 can be appropriately applied to IPPs.

The staff believes the existing regulations in 10 CFR 50.33 and 50.75 provide the authority to request the necessary information from non-utility applicants to perform a financial qualifications review, as well as require the applicants to set aside funds for decommissioning of the reactor. The regulations in 10 CFR 50.75(d) specifically address "non-electric utility applicants" and require these applicants to submit a decommissioning report to the Commission describing the cost estimate for decommissioning the facility and the manner (which must be acceptable to the Commission) in which the funds will be set aside. Moreover, 10 CFR 50.75(e)(2) specifically defines the acceptable financial assurance mechanisms for a licensee other than an electric utility. Public Citizen has not indicated in its petition where the Commission's regulations are inadequate for accommodating a non-utility applicant.

Non-utility applicants for operating licensees must demonstrate financial qualifications pursuant to 10 CFR 50.57, and 10 CFR 50.80 allows the Commission to request information on the financial qualifications of any applicant for license transfer.

Each licensee, utility or non-utility, is required by 10 CFR 140.21 to maintain adequate monies, through several approved methods indicated in that section, to guarantee payment of deferred premiums to satisfy its responsibility under the Price-Anderson Act. Moreover, if the suggested methods of guarantee are for any reason inadequate or inapplicable for a particular licensee, 10 CFR 140.21(f) provides for "such other types of guarantee as may be approved by the Commission."

Pursuant to Public Citizen's concern that non-utility applicants will not have sufficient monies available to fund their requisite payment to the Nuclear Waste Fund, the staff believes that DOE, the agency that administers the Fund, is the best judge of whether a licensee has sufficient funds set aside to meet the costs of disposal of radioactive waste.

For the reasons cited above, the NRC denies the petition.

Dated at Rockville, Maryland this 27th day of July, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-19509 Filed 8-14-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Office of he Comptroller of the Currency

12 CFR Part 34

[Docket No. 92-12]

Office of Thrift Supervision

12 CFR Part 563

[Docket No. 92-348]

RIN 1550-AA56

Real Estate Lending Standards: Supplementary Analysis

AGENCIES: Office of the Comptroller of the Currency and Office of Thrift Supervision, Treasury.

ACTION: Proposed rule; request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) are requesting comments on a supplementary description of the costs and benefits that are likely to accrue as a result of implementing proposed amendments to their real estate lending standards. the two agencies specifically invite commenters to provide any data they may have on the costs and benefits of the proposed rule on the economy at large. For example, comment is requested on the impact on real estate lending operations at depository institutions, including the possible reduction in losses on real estate lending; the deposit insurance funds; the availability of credit for economically sound projects; and on loan documentation, monitoring and processing time. The proposed amendments are described in a notice of proposed rulemaking that was published in the **Federal Register** of July 16, 1992.

DATES: All comments must be submitted on or before August 31, 1992. Commenters are encouraged to incorporate their comments on the costs and benefits of the proposed amendments into their submission on the notice of proposed rulemaking. Separate comment letters on the issues raised in this request for comments will also be accepted.

ADDRESSES: OCC: Office of the Comptroller of the Currency, Communications Division, 250 E St. SW, Washington, DC 20219, Attention: Docket No. 92-12. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OCC. Comments will be available for public inspection and photocopying at the same location.

OTS: Comments should be directed to Director, Information Services Division (ISD), Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention: Docket No. 92-348. These submissions may be hand delivered to 1700 G Street NW. from 9 a.m. and 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906-7755, or extension (202) 906-7753. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street level.

FOR FURTHER INFORMATION CONTACT:

OCC: Frank R. Carbone, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874-5170; William W. Templeton, Attorney, Legal Advisory Services Division, (202) 874-5330; Mitchell Stengel, Financial Economist, Banking Research and Statistics (202) 874-5240.

OTS: Robert Fishman, Program Manager for Credit Risk, (202) 906-5672; William J. Magrini, Project Manager for Credit Policy, (202) 906-5744, Fred Phillips-Patrick, Senior Financial Economist, (202) 906-7295; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 1992, the OCC and the OTS, along with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, published in the **Federal Register** [57 FR 31594] a joint notice of proposed rulemaking (proposal) for implementing the requirements of section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). FDICIA, which was enacted on December 19, 1991, requires each federal banking agency to adopt uniform regulations prescribing standards for extensions of credit secured by liens on interests in real estate. The requirements of section 304 also cover extensions of credit made for the purpose of financing the construction of a building or other improvements to real estate, regardless of whether a lien has been taken on the property. In establishing these standards, the agencies are to consider: (a) The risk posed to the deposit insurance funds by such extensions of credit; (b) the need for safe and sound operation of insured depository institutions; and (c) the availability of credit. The agencies are to adopt uniform regulations within nine months of the date of enactment of FDICIA. The regulations are to become effective within 15 months following enactment of FDICIA.

In connection with the publication of the proposal, the OTS and the OCC made a preliminary determination that the proposal does not constitute a "major rule" within the meaning of Executive Order 12291. Accordingly, a regulatory impact analysis was not required at that time.

The OTS and the OCC desire to issue final regulations implementing section 304 of FDICIA that yield the greatest net benefits. Toward that end, the two agencies are providing this supplementary analysis of the types of costs and benefits that are likely to accrue as a result of implementing the regulatory approaches outlined in the proposal.

To assist the OTS and the OCC in evaluating the nature and magnitude of the impact of the proposed rule, the two agencies specifically invite commenters to provide any data they may have on the costs and benefits of the proposal on the economy at large, including real estate lending, the deposit insurance funds, paperwork and compliance burdens, how well the proposal conforms with existing standards applied by depository institutions and other lenders, and the availability of credit for economically sound projects.

II. Supplementary Analysis

Costs and Benefits of Proposed Loan-to-Value (LTV) Ratio Limits Under Section 304 of FDICIA

A. Introduction

Prior to 1982, national bank real estate lending was governed by statutory and regulatory requirements relating to five aspects of lending activity: Loan-to-value (LTV) ratios, amortization requirements, maturity requirements, aggregate limits, and leasehold requirements. The Garn-St Germain Depository Institutions Act of 1982 removed statutory restrictions on real estate lending by national banks. The OCC was given authority to impose conditions and limitations by regulation or order.

In 1983, the OCC rescinded the existing regulations on real estate lending, including loan-to-value ratios. OCC policy still requires national banks to have in place prudent real estate lending policies which include loan-to-value ratios. Examiners routinely monitor the existence of such policies, their appropriateness for the particular institution, and whether the institution follows its internal policies. However, it was felt that prudent lending and the

safety and soundness of the national banks were better served by a flexible approach that allowed institutions to tailor their policies to differences in market conditions and management philosophies, rather than strict, quantitative standards applied uniformly to all institutions. As the OCC stated at the time, "Decisions concerning the forms and terms of national bank lending are properly the responsibility of each bank's directorate and management."

Similarly, the Garn-St. Germain Act of 1982 removed statutory limitations on LTV ratios for federal savings associations. In May 1983, specific LTV ratios for various types of secured loans were removed from Federal Home Loan Bank Board (the OTS's predecessor) regulations, though some requirements were retained.

In subsequent years, some institutions made imprudent real estate-related loans that required little or no equity investment on the part of the borrower, with costly consequences to financial institutions, the real estate industry, and the federal bank and thrift insurance funds. The proposed regulation, which would limit LTV ratios for real estate lending, is intended to insure that this problem does not recur.

The proposed regulation may produce economic costs and benefits to society and to the depository institutions in at least two areas: (1) Lowering the risk of bank and thrift failures and the attendant costs to the insurance funds; and (2) Altering the availability of credit for real estate lending.

Through its requirement of minimum equity participation levels by borrowers, the proposed regulation establishes a buffer for the absorption of unexpected losses by the borrower. This has three salutary effects. First, the borrower now has a stronger incentive to ensure that the project is successful. This may reduce the waste of economic resources on uneconomic real estate projects. Second, any loss to the institution, and, if the institutions fails, to the insurance funds, is reduced. Third, to the extent fewer institution fail, established borrowers will not face costly disruptions.

To the extent that the proposed LTV limits reduce lending to economically viable projects, the regulation will impose additional costs on depository institutions, on the real estate industry, and on the economy as a whole.

The agencies are cognizant of the important role that the real estate industry plays in the U.S. economy, including its historical role as an engine of recovery from recessions. As such, our goal is to minimize any unnecessary costs imposed on the real estate industry or the economy by this regulatory action.

These issues, and others, are discussed in more detail in the following sections.

B. Summary of Proposed Regulation

The proposal contains two alternative approaches to the regulation of real estate lending through LTV ratio limits. Alternative 1 would require each institution to develop its own LTV ratios for real estate lending within broad ranges set by the regulators and subject to examiner review. Alternative 2 would impose upper limits on all institutions.

PROPOSED LTV RATIO LIMITATIONS UNDER ALTERNATIVES 1 AND 2

Loan type	LTV ranges under alternative #1[1] (percent)	LTV maximums under alternative 2[1] (percent)
Raw land	50–65	60
Preconstruction/development	55–70	65
Construction/land development	65–80	75
Improved property	65–80	75
1–to–4 family residential	80–95	95
Home equity	80–95	95

[1] In some cases, certain qualifying conditions must be met for maximum LTV ratio loans. Please refer to the proposed rule for details.

The types of costs and benefits outlined below would be the same under both alternatives. However, because of the flexibility of Alternative 1, it is more difficult to provide quantitative estimates of the costs and benefits. The agencies believe that Alternative 1 would have a less restrictive impact on the volume of real estate lending, because few, if any, institutions are likely to adopt loan-to-value limits more stringent than those imposed in Alternative 2. At the same time, the risk of loss may rise if institutions set LTV ratios at the higher levels permitted under Alternative 1.

In addition to the two options on LTV ratio limitations proposed in the regulation, the agencies considered other alternatives for fulfilling the statutory mandate. Other options ranged from much more detailed, quantitative requirements concerning other important components of real estate lending (such as maximum maturity limitations, amortization requirements, concentration limits, documentation requirements, etc.) to general regulatory language that required only that institutions undertake prudent real estate lending in a safe and sound fashion. The agencies decided to propose LTV ratio limitations because such limits have long been a significant factor used in institutions' real estate lending decisions.

C. Problems of Measuring Costs and Benefits

The agencies recognize that, whatever our intent, the impact of the regulation is difficult, if not impossible, to assess with certainty. While the effect of the proposal may be estimated for a particular point in time, the potential impact in the future is extremely difficult to assess. Regulatory limits that appear reasonable and prudent today may, in the future, have significant consequences from being too lenient or too stringent.

A first step in estimating the costs and benefits of the proposal is to estimate the degree to which lending by affected depository institutions would be restrained by the proposed limits and exceptions. This is particularly difficult because:

1. Commercial real estate is a volatile and cyclical industry. This volatility creates significant difficulties for the estimation of costs and benefits of the proposed regulation. Standards that might not restrict lending by depository institutions in one time period may restrict lending in another period. For example, based on various market indicators, anecdotal evidence, and an informal survey of a number of national bank examiners, the agencies believe that, at this time, the proposal would, at most, only modestly restrain new lending for commercial real estate. The current weakness of the macro-economy and the severe oversupply of commercial real estate have curtailed new construction and development in many markets across the country. Consequently, loan demand is considerably diminished. In addition, because of weaknesses in local markets, depository institutions have tightened their underwriting standards, including reducing the maximum acceptable loan-to-value ratios. Thus, the proposed standard may have little short-term effect. However, the proposal may have more of an impact on lending as the economy, real estate markets, and loan demand recover.

2. In almost all cases, the data needed to quantify the costs and benefits of the proposed limits to society at large and to the depository institutions are, to our knowledge, unavailable. For example, with the exception of single family residential mortgages, information on loan originations and losses by LTV ratio is not routinely collected for the various types of real estate lending.

While the necessary data are largely unavailable to the agencies, it is likely that the costs and benefits of the proposed LTV ratio limits will differ widely across categories of real estate lending because loss rates are so varied.

For example, focusing only on depository institutions, in 1991, losses on 1-to-4 family residential loans (including both first and second mortgages and home equity loans) held by commercial banks were 0.19% of the dollar amount of commercial banks' average investment in 1-to-4 family loans. Moreover, although 1-to-4 family loans represented almost 50% of all real estate loans held by commercial banks in 1991, they made up less than 10% of the losses from real estate lending. By contrast, losses on all types of construction and land development loans in 1991 were 2.98% of the total of such loans outstanding; construction and land development loans represented only 14% of all real estate loans held by commercial banks in 1991, but accounted for 41% of real estate losses.

Similarly, for thrifts, losses on 1-to-4 family residential loans (including first and second mortgage loans and home equity loans) in 1991 were 0.11% of the dollar amount of thrifts' average investment in 1-to-4 family loans. Although 1-to-4 family loans made up over 75% of all real estate loans held by thrifts in 1991, they made up only 23% of the losses from real estate lending.

By contrast, losses on construction and land development loans in 1991 were 2.16% of the total of such loans outstanding. Construction and land development loans represented only 4.4% of all real estate loans held by thrifts in 1991, but they accounted for 28% of real estate losses.

Refining this data further, for savings associations, losses on residential construction loans in 1991 were 1.3% of the total of such loans outstanding; losses on nonresidential construction loans were 7.2% of the total of such loans outstanding; and, losses on land loans were 1.6% of the total of such loans outstanding.

With such wide differences in loss rates, the benefits of reduced losses from the proposed LTV ratio maximums are also likely to vary considerably for various types of real estate lending. The loss data suggest they will be higher for assets such as commercial construction and land development lending than for 1-to-4 family residential mortgage and home equity lending.

Because of the limited available information, it is not possible to draw conclusions about the net effect of the proposal on future lending activities. Parts D and E of this section provide only general descriptions of the major costs and benefits of the proposal. The quantitative descriptions that are included in the discussion of costs and benefits are also very general and do not treat each of the proposed LTV ratios separately.

D. Benefits

1. *Reduction in uneconomic real estate projects.* The primary benefit of the proposal would be the reduction in the volume of uneconomic real estate projects. To the extent that the proposed loan-to-value limits are lower than those that would otherwise be required, the new regulation will require a greater equity commitment on the part of borrowers or guarantors. The higher equity requirement may discourage some borrowers from proceeding with uneconomic projects. (Other borrowers may find other, non-bank, sources of credit.) If alternative sources of funding cannot be found at acceptable costs, the level of real estate activity will be reduced. This reduction may have social benefits to the economy if resources are instead used for other types of economic activity that have a greater value to society than the real estate projects.

Insured depository institutions that could no longer make these uneconomic real estate loans would benefit to the extent that the regulation reduces uneconomic lending. The institutions would gain because the volume of real estate loans that ultimately fail to perform (and result in losses) will be reduced. Additional gains will accrue to the institutions in those cases where borrowers are able to meet the new requirements and the loans are made, since the higher equity commitment will provide a greater cushion for the lending institution, and borrowers will absorb greater losses before the collateral value falls below the loan amount.

In both of these cases, benefits will accrue to the owners of the depository institutions (who would have to absorb the losses). Benefits may also accrue to the Federal depository institution insurance funds, if institutions avoid losses on real estate loans that would otherwise have resulted in their insolvency.

It is not possible to attach a quantitative estimate to the potential benefits to society with the data available at this time.

In the case of single family mortgages, the agencies do have data that show that default rates (and, presumably, loss experience) increase as LTV ratios increase. For example, the Texas mortgage default experience was one of the worst in recent history and is used as a standard for stress tests. Cumulative default experience (through April 30, 1989) on 30-year fixed rate home mortgage loans originated in Texas in 1981 and 1982 and sold to the Federal National Mortgage Association (FNMA) show the following default rates:

TEXAS DEFAULT EXPERIENCE ON 30-YEAR FIXED RATE HOME MORTGAGE LOANS

LTV ratio at origination (percent)	Cumulative default rates [1] (percent)
Less than 60	0.7
61–70	1.6
71–75	3.8
76–80	8.1
81–90	14.1
Greater than 90	24.1

[1] Loans originated 1981–1982, experience through 1989.

Similarly, national data from private mortgage insurance companies (which, in general, only insure home mortgage loans that have LTV ratios in excess of 80% at origination) show the following default rates:

NATIONAL DEFAULT EXPERIENCE ON LOANS WITH PRIVATE MORTGAGE INSURANCE

LTV ratio at origination (percent)	Average default per 100 loans [1] (percent)
80–85	2.38
85–90	4.01
90–95	7.83

[1] Loans originated 1975–1985, experience through 1989.

These data are applicable only to single family home mortgage loans. The agencies do not have comparable data that demonstrate the difference in losses or profits that accrue to institutions based on the LTV ratio of commercial real estate loans. While it seems logical that fewer losses will accrue on loans originated at 60% to 70% of appraised value rather than 95% to 100%, the magnitude of the difference is not known. At the same time, the interest rate charged by the lenders may be higher for loans with higher LTV ratios, in order to compensate for the greater risk of default. Further, the difference in losses experienced with loans with slightly different LTV ratios, such as 80% loan and an 85% loan, is not known and may be due to a range of factors not addressed in the proposed regulation.

2. *Fewer and less costly failures of depository institutions.* Many of the depository institutions that have failed in recent years have had

disproportionately high exposures to real estate. For example, for those insured commercial banks that failed in 1991,[1] commercial real estate loans,[2] the largest source of real estate loan losses, made up 24.2% of total loans at the end of 1989, compared with 14.8% for insured commercial banks that did not fail. Thus, the impact of the proposal may be disproportionately greater on depository institutions vulnerable to failure. If these institutions incur reduced real estate losses, possibly fewer banks will fail. This in turn will mean smaller losses to the Bank Insurance Fund (BIF) and Savings Association Insurance Fund (SAIF). Protection of the BIF and SAIF is one of the mandated objectives of section 304 of FDICIA and the proposal. It is not possible to attach a quantitative estimate to this category of benefits with the data available at this time.

3. *Reduced losses for surviving institutions.* While real estate losses were a principal cause of the failure of many institutions, they also resulted in losses at institutions that did not fail. If institutions incur fewer and/or smaller real estate losses due to the new LTV requirements, their loan losses are likely to be reduced and their earnings increased.

As a first approximation, this benefit might be estimated as a percentage of the real estate losses incurred by depository institutions.

For commercial banks, the record losses of recent years are the result of loans made several years earlier, and may not be indicative of the losses that might be expected to occur several years from now, when the condition of real estate markets will have changed. In fact, given the cyclical nature of commercial real estate, loan originations are likely to be substantially lower when the new regulation takes effect in 1993 and in subsequent years than they have been in recent years. The restraining impact of the loan-to-value limits and any resultant reduction in subsequent losses will also be correspondingly reduced. Thus, it might be more appropriate to use loss rates from a period before the recent increase in real estate lending as a benchmark for estimating benefits for commercial banks.

Real estate loans outstanding at commercial banks and real estate loan losses were both considerably lower in the period 1984–1989 than in more recent years. Total real estate loans outstanding averaged $557 billion in the earlier period, compared to $829 billion for 1990–1991. Real estate loan losses were approximately $2 billion per year in the earlier period compared to $7.25 billion per year more recently. It seems likely that conditions in the mid-1990s, when the first impacts of the proposed regulation would be felt, will more closely resemble the 1984–1989 experience than the 1990–1991 experience.

Based on this assumption, if, for example, real estate losses to surviving institutions were reduced by an amount equal to 5% of the 1984–1989 average losses of $2 billion per year, benefits would be approximately $100 million per year. Other hypothetical percentage reductions in losses, and the corresponding benefits, are shown in the table below.

ESTIMATED BENEFITS FROM REDUCED REAL ESTATE LOSSES FOR COMMERCIAL BANKS

Percentage of average 1984–1989 real estate losses	Annual benefits
5	$100 million.
10	200 million.
15	300 million.

For thrift institutions, the OTS does not believe that the 1984–1989 time period would be the appropriate benchmark, due to the overhang of insolvent thrift institutions for much of this period and because of the subsequent tremendous shrinkage in the industry. Using instead the loss experience of the last two years, which shows net annual real estate loan losses (excluding single family home mortgage loans which have fewer losses) averaging approximately $1.4 billion, the table below illustrates several hypothetical percentage reductions in losses and the corresponding benefits.

ESTIMATED BENEFITS FROM REDUCED REAL ESTATE LOSSES FOR THRIFTS

Percentage of average 1990–1991 real estate losses	Annual benefits
5	$70 million.
10	140 million.
15	210 million.

4. *Smoothing regional macroeconomic cycles.* The volatility of the real estate industry has greatly exacerbated the instability of regional economies in areas such as Texas (1986–88) and New England (1989–present). Furthermore, many believe that depository institutions contributed to the real estate overbuilding in these areas by providing funding for marginal projects.

This phenomenon of funding for marginal projects, which may contribute to regional "booms" and "busts," may be due, in part, to information deficiencies on the part of lenders. Major real estate projects often involve a significant lead time (for example, obtaining approval from local zoning bodies, which can take years in some jurisdictions). This long lead time, coupled with a lack of knowledge concerning the plans of other developers and lenders in the area, requires lenders to make lending decisions based on their limited information about future economic conditions. Thus, real estate projects that appear to have been viable when initiated, may be marginal or uneconomic when actually completed, several years later.

Some depository institutions may have made the problem of information deficiency worse by originating real estate loans with very high loan-to-value ratios. By restricting real estate lending to more conservative levels, the new regulation could temper the impact of regional "booms" and "busts" caused by information deficiencies and imprudent lending. The regulation may reduce the magnitude of overbuilding during "boom" times and thus moderate the severity of any subsequent regional recession, with its widespread economic and social costs. It is not possible to attach a quantitative estimate to this category of benefits with the data available at this time.

5. *Simplified monitoring and enforcement of supervisory standards.* Thrift institutions are currently subject to a number of real estate-related statutory and regulatory quantitatively-based restrictions. For example, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 limited thrift institutions' authority to make nonresidential real estate loans to 400% of their total capital. Further, the OTS's risk-based capital rule, promulgated in 1989, treats as "equity investments" the portion of land loans and nonresidential construction loans in excess of 80% loan-to-value ratio. These equity investments are deducted from regulatory capital under the risk-based capital rule. Other restrictions on thrift institutions include LTV ratio limitations, term limitations, and private mortgage insurance requirements for high LTV ratio home mortgage loans. See 12 CFR 545.32, 545.33, 545.35, 545.97, 567.5.

Since 1983, there have been no regulatory quantitative restrictions on real estate lending for commercial

[1] Total resolutions, including both closures and assisted banks.

[2] Construction and land development loans plus nonfarm nonresidential loans.

banks, providing bank regulators and examiners with a less specific standard in determining prudent standards. More importantly, this may have led to differences of interpretation between examiners and banks.

Alternative 1, as set forth in the proposal, would formally limit the potential discretion and the potential for differences of interpretation. However, flexibility would remain. Alternative 2 would set uniform standards, applicable to all depository institutions, and would thus make it easier for examiners and regulators to monitor performance and to enforce compliance with the standards. It is not possible to attach a quantitative estimate to this category of benefits with the data available at this time.

E. Costs

1. *Reduced prudent real estate lending.* As discussed earlier, the agencies' intent in drafting the proposed rule is to impose reasonable, prudent standards on all institutions, not to forestall extensions of credit that are sound. Nonetheless, the proposed limitations may result in institutions not making loans that they would otherwise make and that would not result in losses. The depository institution would most likely put these funds to use elsewhere, either in other categories of lending or in investments, but presumably at lower overall rates of return. Alternatively, the depository institution may choose to reduce its liabilities, and thereby shrink in size.

Such reductions in the volume of real estate lending by depository institutions will mean, in some cases, that borrowers will have to pay more to obtain financing from nonbank sources; in other cases, borrowers will not be able to obtain the funds elsewhere, and economically viable activities that would have been financed will not be undertaken. This could result in a net cost to society, if the real estate activities that are not undertaken are the best use of available resources. Such resources may, instead, be expended on activities that will not produce as high a net benefit to society.

It is not possible to attach a quantitative estimate to the potential costs to society with the data available at this time.

To estimate the magnitude of this cost to depository institutions, the reduction in performing real estate lending and the differential nominal earnings rate between real estate lending and other forms of lending or investments must be established. The highly cyclical nature of the commercial real estate industry and the fact that the industry is currently at a low point of a very severe cycle indicate that any reduction in commercial real estate lending may be small when the loan-to-value limits become effective early in 1993. Therefore, it might be more appropriate to estimate the impact of the new regulation on the basis of a less extreme period, such as 1984–1989, rather than more recent years.

Over the 1984–1989 period, the average year-end aggregate volume of non-1-to-4 family real estate loans outstanding at all insured commercial banks was approximately $310 billion. If, for example, the proposed LTV ratio requirements reduced "good" loans in these categories by 2%, and alternative investments earned 50 basis points less than real estate lending for the institutions, then the foregone earnings for the industry would be $31 million per year. The table below shows the estimate of reduced earnings per year for different hypothetical combinations of reductions in loan volume, expressed as a percentage of the 1984–1989 average, and differentials in earnings between real estate lending and alternative investments.

ESTIMATES OF REDUCED EARNINGS PER YEAR AS RESULT OF REDUCTIONS IN "GOOD" REAL ESTATE LENDING FOR COMMERCIAL BANKS (EXCLUDING 1-TO-4 FAMILY REAL ESTATE LOANS

[Dollars in Millions]

Reduction in real estate lending (percent of 1984–89 average)	Earnings differential (basis points)		
	50	100	200
1	$15.5	$31	$62
2	31	62	124
5	77.5	155	310

Similarly, for thrift institutions one method to assess the effect of the proposal is to review the potential reduction in earnings due to a reduction in real estate lending. As discussed above, the OTS believes that the time period 1984–1989 may not be an appropriate benchmark for thrifts. Using instead the lending experience of the last two years, during which real estate loans (excluding 1-to-4 family permanent mortgage loans) average approximately $121 billion, the table below illustrates several hypothetical percentage reductions in losses, earnings differentials, and the corresponding earnings reductions.

ESTIMATES OF REDUCED EARNINGS PER YEAR AS RESULT OF REDUCTIONS IN "GOOD" REAL ESTATE LENDING FOR THRIFTS (EXCLUDING 1-TO-4 FAMILY REAL ESTATE LOANS

[Dollars in Millions]

Reduction in real estate lending (percent of 1984–89 average)	Earnings differential (basis points)		
	50	100	200
1	$6	$12.1	$24.2
2	12.1	24.2	48.4
5	30.25	60.5	121

A special situation with regard to the cost of reduced prudent real estate lending may arise in the case of the LTV requirement for lending by depository institutions to agricultural property. Under Alternative 2 of the proposal, the maximum permissible LTV ratio for loans secured by farmland committed to ongoing agricultural production is 75%. Under Alternative 1 of the proposal, the LTV ratio can be set as high as 80%. In contrast, some government-sponsored lending programs permit higher maximum LTVs for the extensions of credit secured by agricultural property. For example, the maximum LTV ratio under the rules of the Farm Credit Banks is 85%. The lower LTV limit proposed for depository institutions may mean that these institutions will no longer be able to offer competitive terms for agricultural real estate loans.

2. *Impact of exceptions provision.* The degree of restraint on the level of real estate lending under the proposed regulation will be determined by the combination of the LTV limits and the exceptions provision. The latter provision allows each institution to make loans that do not conform with the LTV limits up to an amount equal to 15% of total capital. The exception limit is designed to apply to the total dollar amount of all loans that exceed the appropriate LTV ratio maximum. This exception provision may be of limited value to small depository institutions, since they may reach their exception limit with one or two real estate loans.

To assess the impact of this exception provision on small commercial banks with high levels of capital, the size of the exceptions category was determined for banks with assets up to $300 million and total capital equal to 10% or more of total assets, using Call Report data from year-end 1991. For all 3750 banks, the average limit for loans in the exceptions category would have been $965,000.

The table below gives a more detailed breakdown of these strongly capitalized small banks. The table indicates that the proposed exceptions limit would be very restrictive only for a very small number of banks; the affected banks are generally small in size, and their real estate lending is concentrated in agricultural properties.

IMPACT ON PROPOSED EXCEPTION PROVISION ON STRONGLY CAPITALIZED SMALL BANKS

Total dollar amount of nonconforming loans permitted	No. of banks	Average bank asset size ($ millions)	Maximum bank asset size ($ millions)
$100,000 or less	36	$4.0	$6.5
$100,000–$250,000	352	10.1	16.6
$250,000–$8.5 million	3,362	55.8	300

Using the same criteria discussed above (assets of $300 million or less and total capital to total assets of 10% or more), the table below shows the impact of the proposed exception provision on strongly capitalized small thrifts.

IMPACT OF PROPOSED EXCEPTION PROVISION ON STRONGLY CAPITALIZED SMALL THRIFTS

Total dollar amount of nonconforming loans permitted	No. of thrifts	Average thrift asset size ($ millions)	Maximum thrift asset size ($ millions)
$100,000 or less	5	$3	$5
$100,000–$250,000	20	9	14
$250,000 plus	314	81	300

3. *Compliance costs to depository institutions.* Depository institutions are currently required to have written policies governing real estate lending. LTV ratios have long been regarded as one important factor in the lending decision, and are currently recorded in loan files as part of the normal process of loan documentation and administration. Thus, any requirement to consider LTV ratios in the lending decision and to maintain records that document these ratios should not impose new recordkeeping or paperwork costs.

Alternative 1 of the proposal sets ranges within or below which each institution may set its own maximum LTV ratio limits. However, the proposal establishes the low end of the range as the benchmark and then states that: ". . . each institution would be permitted to establish a higher maximum LTV ratio, within the supervisory range, for each category of loan based on the institution's demonstrated expertise in a particular type of lending, its assessment of local and regional market conditions, the institution's capital position, its asset quality, and other appropriate considerations." An institution that decides to adopt one or more LTV ratio limits above the low end of the relevant range may need to provide support for this decision that results in a recordkeeping or reporting burden.

In addition, the agencies may require institutions to develop information and reporting systems on loans made under the exception provision, in order to monitor the total volume of such loans outstanding and to ensure that the total does not exceed the specified limit.

Any changes in the Call Reports and Thrift Financial Reports because of the new regulation may also require changes in information and reporting systems.

Any new information and reporting systems would require one-time start-up costs in the initial year(s), followed by ongoing data entry and maintenance costs.

The proposed regulation, like the other banking rules, may also result in new legal costs to depository institutions as any failure to conform with a regulation constitutes a violation of law.

It is not possible to attach a quantitative estimate to this category of costs with the data available at this time.

4. *Compliance costs to regulators.* To monitor compliance with the new regulation, regulators will have to make minor adjustments to examination procedures. For example, procedures would have to be developed for examiners to monitor and report on the total volume of loans outstanding in the exceptions category. It is not possible to attach a quantitative estimate to this category of costs with the data available at this time.

5. *Impact on loans to low and moderate income individuals.* Some institutions, to make loans to low and moderate income individuals and loans designed to promote the economic development and rehabilitation of low-income areas, may originate relatively high LTV-ratio loans. The proposal did not include a specific exemption for these types of loans. Thus, the proposal may limit the ability of institutions to make these loans. (It should be noted, however, that the preamble to the proposal states that the agencies do not wish to restrict such lending, and solicits comment on how such programs might be accommodated within the spirit of the statutory mandate of section 304.)

If the proposal reduces such lending activity, costs will be borne by potential borrowers who do not have access to other sources of funding. Fewer losses, however, may be incurred by lenders. It is not possible to attach a quantitative estimate to this category of costs with the data available at this time.

6. *Impact of loans to small businesses.* The proposed rule applies to an institution's loans to all real estate borrowers, regardless of the size of business. Because some of these borrowers are small businesses which may not have as many alternatives as other borrowers for securing credit, the proposed rule may impact the availability of credit to them. It is not possible to attach a quantitative estimate to this category of costs with the data available at this time.

7. *Costs of reduced flexibility.* Alternative 2 of the proposed regulation would set uniform loan-to-value standards for all institutions. This would result in a loss of flexibility, compared to existing policy and to Alternative 1. If institutions cannot set their own real estate lending policies with regard to loan-to-value ratios, they will be less able to tailor their policies to reflect market conditions and management philosophies. Two costs of this reduced flexibility may be losses of market share to nonregulated lenders and reductions in prudent real estate lending (see E. 1., above).

It is not possible to attach a quantitative estimate to this category of cost with the data available at this time.

F. Requests for Comment

The agencies request comment on all the issues discussed above and on the following specific questions:

1. What information is available that can help the agencies quantify the costs and benefits discussed above? In particular, are there data available on loan originations and loss experience by LTV ratio or different categories of real estate lending?

2. What additional costs should the agencies consider on their evaluation of the proposed rule?

3. What additional benefits should the agencies consider in their evaluation of the proposed rule?

4. What alternative formulations of the proposed regulation should the agencies consider to ensure that the objectives of section 304 of FDICIA are

met without imposing unnecessary costs on insured depository institutions or on the economy? How would the costs and benefits differ if loan-to-value ratio limits were established in agency policy statements rather than in regulation?

5. Are the proposed real estate lending standards generally the same as those currently prevailing in the industry? If they are not the same, what LTV ratio limitations are generally used by depository institutions or by other credit sources?

6. What are the costs and benefits of setting uniform loan-to-value standards, as opposed to allowing institutions to establish their own policies? How would the costs and benefits change if the regulation were to establish different loan-to-value limits, for example, for different regions of the country, or for large metropolitan areas as opposed to smaller cities or rural areas?

7. Would the proposed exception limit provide sufficient flexibility for small institutions to make prudent loans? If not, what alternative exception provisions might provide sufficient flexibility without providing unwarranted risk?

8. Would the proposed LTV ratio limits restrict economically viable real estate projects? If so, to what extent?

9. Are there significant differences between the costs and benefits of Alternative 1 and those of Alternative 2?

10. Under Alternative 1, each institution would be required to have a lending policy that includes internal LTV ratio limits and specifies the criteria used to qualify loans up to these limits. These standards will be subject to examiner review and would become a basis for determining compliance with the proposed regulation. Is this requirement likely to impose excessive recordkeeping or reporting requirements? And, if so, why? Commenters who believe the requirement will be excessive are requested to provide examples or an estimate of the burden involved.

Office of the Comptroller of the Currency.

Dated: August 12, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

Office of Thrift Supervision.

Dated: August 12, 1992.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 92-19622 Filed 8-14-92; 8:45 am]

BILLING CODE 4810-33-M, 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-33-AD]

Airworthiness Directives; Beech 90, 99, 100, 200, and 1900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech 90, 99, 100, 200, and 1900 series airplanes. The proposed action would require a one-time inspection to ensure that the pilot and copilot chair locking pins will fully engage in the seat tracks and modification of the subject chair if a locking pin fails to fully engage or is misaligned. The Federal Aviation Administration (FAA) has received reports of pilot and copilot chair locking pin malfunctions, which in one instance caused the pilot chair to slide back from the full forward position. The actions specified by the proposed AD are intended to prevent inadvertent movement of the pilot or copilot chair, which could result in loss of control of the airplane if it occurs during a critical flight maneuver.

DATES: Comments must be received on or before October 23, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-33-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111. This information may also be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4128; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-33-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-33-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received two in-flight reports and three factory reports of pilot and copilot chair malfunctions on certain Beech 90, 99, 100, 200, and 1900 series airplanes. These reports indicate that a chair locking pin was not fully engaged or was misaligned with the subject seat track, which could cause the chair to slide back while in the full forward position. During one of the referenced in-flight incidents, the pilot slid back in the chair during landing and temporarily lost contact with the rudder pedals. In this instance, the pilot was able to maintain control of the airplane without further incident. This condition, if not detected and corrected, could result in loss of control of the airplane if it occurs during a critical flight manuever.

Beech has issued Service Bulletin (SB) No. 2444, dated April 1992, which specifies inspection procedures for the

pilot and copilot chair locking pins for proper engagement when the chairs are in the full forward position. This service bulletin also details modification procedures that, if accomplished, would ensure that a locking pin would fully engage the locking pin receptacle when the chair is in the full forward position.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent inadvertent movement of the pilot or copilot chair, which could result in loss of control of the airplane if it occurs during a critical flight maneuver.

Since the condition described is likely to exist or develop in other Beech 90, 99, 100, 200, and 1900 series airplanes of the same type design, the proposed AD would require a one-time inspection to ensure that the pilot and copilot chair locking pins are fully engaged and the locking pins are properly aligned with the seat tracks, and modification of the subject chair if a locking pin is not fully engaged or is misaligned. The proposed actions would be accomplished in accordance with Beech SB No. 2444, dated April 1992.

The FAA estimates that 4,298 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately .5 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $118,195.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 92-CE-33-AD.

Applicability: The following Model and Serial Number airplanes, certificated in any category:

Models	Serial numbers
65-90, 65-A90, 65-A90-1,65-A90-2, 65-A90-3, 65-A90-4, B90, C90, C90A, E90, F90, and H90.	LJ-1 through LJ-1311, LW-1 through LW-347, LA-2 through LA-236, LM-1 through LM-141, LS-1, LS-2, LS-3, LT-1, LT-2, LU-1 through LU-15, and LL-1 through LL-61.
99, 99A, A99A, B99, and C99.	U-1 through U-239.
100, A100, and B100.	B-1 through B-247 and BE-1 through BE-137.
200, 200C, 200CT, 200T, A200, A100-1, A200CT, B200, B200C, B200CT, and B200T.	BB-2 through BB-1405, BC-1 through BC-75, BD-1 through BD-30, BJ-1 through BJ-66, BL-1 through BL-137, BN-1 through BN-4, BP-1 through BP-71, BT-1 through BT-33, BU-1 through BU-12, BV-1 through BV-12, FC-1, FC-2, FC-3, FE-1 through FE-9, FG-1, FG-2, and GR-1 through GR-19.
1900, 1900C, and 1900D.	UA-1, UA-2, UA-3, UB-1 through UB-74, UC-1 through UC-174, UD-1 through UD-6, and UE-1 through UE-20.

Compliance: Required within the next 150 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent inadvertent movement of the pilot or copilot chair, which could result in loss of control of the airplane if it occurs during a critical flight maneuver, accomplish the following:

(a) Inspect the pilot and copilot chairs in the full forward position to ensure that the chair locking pin on each chair is fully engaged and each locking pin is properly aligned with the seat tracks in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" section of Beech Service Bulletin (SB) No. 2444, dated April 1992.

(b) If either locking pin is not fully engaged or is misaligned with the seat tracks as a result of the inspection required by paragraph (a) of this AD, prior to further flight, modify the subject chair in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" section of Beech SB No. 2444, dated April 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 3, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19494 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-67-AD]

Airworthiness Directives; Boeing Models 707, 727, 737, 747, and 757 Series Airplanes; and McDonnell Douglas Models DC-8, DC-9, and DC-10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Boeing and McDonnell Douglas airplanes, which currently requires certain operational and equipment changes and design modifications to be accomplished to maximize fire detection and protection in main deck cargo compartments. The

existing rule was issued based on the FAA's determination that the existing Class B cargo compartment firefighting procedures and fire protection features were inadequate, and could result in the loss of an airplane. This action would require certain design modifications and operational requirements to ensure an adequate level of safety on airplanes with Class B cargo compartments. This proposal is prompted by comments from the public and additional information received after issuance of the existing AD.

DATES: Comments must be received no later than October 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-67-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning Boeing airplanes, contact Ms. Susan Letcher, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2670, fax (206) 227-1181. For information concerning McDonnell Douglas airplanes, contact Mr. Kevin Kuniyoshi (for McDonnell Douglas airplanes), Aerospace Engineer, Los Angeles Aircraft Certification Office, Mechanical/Environmental and Crashworthiness Section, ANM-131L, FAA, Transport Airplane Directorate, 3229 E. Spring Street, Long Beach, California 90806-2425, telephone (310) 988-5337, fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-67-AD." The post card will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-67-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On May 3, 1990, the FAA issued AD 89-18-12 R1, Amendment 39-6557 (55 FR 11163, March 27, 1990), applicable to certain Boeing and McDonnell Douglas airplanes, to require (1) conversion of all main deck Class B cargo compartments to Class C, or (2) the carriage of all cargo in Class C containers, or (3) the use of individuals trained to fight cargo fires and the installation of certain modifications to the airplane. (Class B and C cargo compartments are defined in 14 CFR 25.857.) That action was prompted by an FAA evaluation of fire protection features of "Combi" airplanes following the loss of a Boeing Model 747-200 Combi that developed a major fire in the main deck Class B cargo compartment. The AD had a two-step compliance program, requiring certain equipment and operational upgrades within one year and more substantial modifications within three years.

After AD 89-18-12 R1 was issued, however, the FAA determined that some of the technical requirements and compliance dates must be re-evaluated based on new information from the FAA Technical Center and unanticipated difficulties encountered by operators in complying with the rule. On April 19, 1991, the FAA issued AD 91-10-02, Amendment 39-6986 (56 FR 20529, May 6, 1991), to supersede AD 89-18-12 R1. AD 91-10-02 was essentially identical to AD 89-18-12 R1, except that it provided relief from the one-year compliance time for some requirements and requested the submittal of comments on all requirements.

AD 91-10-12 was issued through an expedited NPRM process to ensure that relief from certain one-year requirements could be provided prior to the deadline for their compliance, which was May 3, 1991. Because this expedited process would not allow sufficient time for the public to prepare comments on the more extensive three-year requirements, the AD had a provision to continue to accept comments on these proposed requirements after the final rule was issued. This proposal is based on those later comments received; recent test results from the FAA Technical Center; discussions with the Boeing Commercial Airplane Group and industry representatives; and coordination with airworthiness authorities from other countries.

This rulemaking action proposes to supersede, rather than amend, AD 91-10-02 because the changes being proposed are significant. This proposal would eliminate the option provided in paragraph B.3. of AD 91-10-02, which allowed the use of trained firefighters, in conjunction with an extensive cargo compartment liner, a 15-minute halon fire knock-down system, and other equipment upgrades. That option would be replaced with an option to use blankets/containers for all cargo, and a second option to install an extended halon (or equivalent) fire suppression system. Both of these options would also require certain equipment and operational modifications, including manual firefighting equipment, an upgraded barrier between the cargo and passengers, and upgraded smoke detection. This proposal would also eliminate the requirement for a thermal monitoring system, which was required by both AD 89-18-12 R1 and AD 91-10-02. The one-year requirements of AD 91-10-02 would remain essentially unchanged by this proposal, but the three-year requirements would be significantly different, including an extension of the compliance time.

The following summarizes the background for determining the requirements of the proposed rule and the comments that were received after AD 91-10-02 was issued. All comments received were given due consideration in formulating this proposed rule.

Note: The format of this proposed rule has been restructured to be consistent with the standard **Federal Register** style. The main difference in formatting is the paragraph designations. Whereas the previously issued AD's used upper case letters to designate major paragraphs [i.e., "A., B., and C."], the new proposal uses lower case letters in parentheses to designate major paragraphs [i.e., "(a), (b), and (c)"]. Throughout the following discussion all references to specific paragraphs that appeared in the previously issued AD's cite the actual paragraph

designations that appeared in those AD's; references to paragraphs in the proposed rule use the new paragraph designations.

Discussion of Background and Issues

The FAA issued the original "Combi AD," AD 89-18-12 R1, based on a study after a South African Airways (SAA) 747 Combi accident, which showed that past certification criteria for Combis were inadequate. The requirements of AD 89-18-12 R1 applied to all large transport Combis, with no distinction between wide-body and narrow-body airplanes. That AD was superseded by AD 91-10-02, which also made no such distinction. (As noted previously, AD 91-10-02 was essentially identical to AD 89-18-12 R1, except that it provided relief from some of the one-year compliance requirements and requested the submittal of comments on all requirements of the rule.)

Paragraph B. of AD 91-10-02 offered operators three options for compliance by May 3, 1993. These were: (1) Converting the main deck cargo compartment to Class C; (2) carrying all cargo in Class C containers; or (3) using trained firefighters, in conjunction with design improvements that included a cargo compartment liner and a 15-minute halon knock-down system. Because of the high cost to convert to a Class C configuration, and the unavailability and inflexibility of Class C containers, virtually all Boeing Model 747 Combi operators elected to pursue the third option (paragraph B.3. of AD 91-10-02). Many of these operators subsequently reported serious concerns about the cost and logistics of complying with the paragraph B.3. option. Installation of the cargo compartment liner and the logistics of implementing the requirement for trained firefighters appeared to be the most difficult problems for the operators. Concurrently, test data from the FAA Technical Center indicated that the provisions of the paragraph B.3. option did not provide the level of safety previously predicted. In particular, the FAA and the airworthiness authorities from other countries reconsidered the effectiveness of trained firefighters in many fire situations that could occur on large transport category Combis.

Testing at the FAA Technical Center has demonstrated that there are severe limitations to manual firefighting in the cargo compartment environment. A high level of training, including recurrent training, would be required to effectively prepare firefighters to fight airplane cargo fires. There was a reluctance on the part of the Boeing Model 747 operators in Europe and North America to provide such a training program due to cost, labor, and logistics considerations. Moreover, even a highly trained firefighter would only be effective against very small, accessible fires. Other fires would be likely to grow out of control quickly and compromise flight safety. For these reasons, the concept of using trained firefighters is not being considered in this proposed rule, effectively eliminating the paragraph B.3. option of AD 91-10-02.

Removal of the firefighter option would leave operators with two choices: Converting to Class C or using Class C containers. However, the operators have already found these options to be unworkable. As a result, the FAA began to examine alternative methods of compliance that would provide an acceptable level of safety. Consequently, two additional options are being offered in this proposed rule: using containers or blankets for all cargo, or installing a 90-minute halon protection system.

Proposed Blanket/Container Option

Testing at the FAA Technical Center and by the United Kingdom Civil Aviation Authority (CAA) has demonstrated that fire-resistant blankets are an effective method of containing cargo fires. These blankets completely cover the cargo, thereby limiting the supply of oxygen to the fire and effectively preventing its growth and spread to other cargo. Testing has demonstrated that blankets can contain a fire for at least three hours, but it is surmised that blankets could contain a fire considerably longer and, in some cases, actually cause it to extinguish. Similar test results have been achieved with fire resistant containers. Based on this information, the FAA has already granted alternative methods of compliance with AD 91-10-02 to some operators in Alaska to use blankets/containers to achieve an acceptable level of safety. An option, similar to the alternative methods of compliance previously granted to certain U.S. operators operating in Alaska, to use blankets/containers has been included in this proposed rule. The paragraph (b)(3) option of this proposed rule stipulates that blankets/containers may be used for all cargo, but also specifies that associated equipment, airplane modifications, and enhanced training must be incorporated if this option is selected. This option omits the requirement for trained firefighters because testing at the FAA Technical Center has shown that attempting to manually fight a fire under a blanket or in a container could introduce oxygen to the fire and worsen the situation. The best approach appears to be leaving the fire alone while the airplane diverts and lands, except in the unlikely event that it breaks out of the blanket or container. However, enhanced training of the crew for responding to alarms, and monitoring and controlling fires, would still be required under this new option. This rulemaking action also proposes to omit the requirement to provide a means to shut off ventilation to the cargo compartment, currently required in the paragraph B.3. option of AD 91-10-02, because blankets and containers effectively provide this function. This option would continue to require an upgraded barrier between the passenger and cargo compartments to prevent flame and smoke penetration into the passenger compartment.

Operators who elect to accomplish the blanket/container option would be required to submit sufficient data to the FAA to show that the devices selected will adequately contain fires. The FAA may require actual full-scale testing, similar to that performed at the FAA Technical Center, to demonstrate fire containment. The tests conducted at the FAA Technical Center to evaluate fire containment ability have involved the use of a cardboard/paper fire load ignited in a container or under a blanket. This test need not be performed on an airplane, however. Operators would also be required to establish FAA-approved procedures for the use and maintenance of the devices, taking into consideration cargo loading procedures and possible degradation during service.

Although AD 91-10-02 made no mention of the use of blankets, the FAA received some comments regarding them. One commenter states that blankets are difficult to maintain, could prevent fire detection, and could hamper firefighting efforts. The FAA recognizes that the nature of some operations may make this option unfeasible, due to damage control and the logistics of ensuring that enough blankets are available at all the appropriate airports. Although testing at the FAA Technical Center has shown that blankets can tolerate some damage, operators selecting this option would still be required to demonstrate that blankets and containers would be properly maintained.

The FAA concurs that blankets and containers could delay smoke detection, but does not consider that such a delay would be significant. Fires under blankets or in containers would be kept sufficiently small such that they would not pose an immediate threat to the airplane. Additionally, blankets and containers have demonstrated the

ability to contain fires for extended periods of time

The FAA concurs that blankets could hamper firefighting. As previously discussed, testing at the FAA Technical Center has shown that manual intervention of a fire under a blanket or in a container is not advisable. Because blankets and containers have demonstrated successful fire containment, the necessity for manual firefighting is not anticipated, except in the unlikely event that the blanket or container fails to contain the fire. If the blanket/container option is selected, the operator's training program would be required to address this possibility.

Proposed Extended Halon System Option

The FAA recognizes that the blanket/container option may be difficult to implement for some Boeing Model 747 Combi operators in Europe and North America, due to operational and logistical concerns. For this reason, a fourth option, requiring the installation of an extended halon, or equivalent, protection system, has been incorporated in this proposed rule. This option, provided by proposed paragraph (b)(4) of this notice, would require the installation of a halon extinguishing system that provides 90 minutes of protection, along with additional design and equipment modifications, and training requirements. The additional required modifications would be similar to those required by the paragraph B.3. option of AD 91–10–02, except that the extensive liner and the thermal monitoring system requirements would be omitted. The requirement for an upgraded barrier between the passenger and cargo compartments would be retained to prevent flame and smoke penetration into the passenger compartment.

A total of 90 minutes of halon protection was selected for this option based on a survey of current Boeing Model 747 operations in Europe and North America. This survey showed that most existing Combi flights were within 120 minutes of a suitable landing site, and that 90% of flight time was within 90 minutes of a suitable landing site. Upgrading the duration to 120 minutes would impart unreasonable cost, weight, and design penalties on operators of existing airplane designs, particularly in light of the fact that at least 90% of Combi flight time is afforded full halon coverage, and a fire is a rare event. The FAA also recognizes that Combi Class B compartments cannot be easily sealed, due to leakage through the floor. Therefore, in order to obtain 90 minutes of protection, halon must be continuously released into the compartment to account for leakage. To accommodate this, significantly more halon would be required than for sealed areas, such as lower lobe Class C cargo compartments. In the worst case, where the airplane was actually 120 minutes from a suitable landing site, other factors would contribute to the likelihood of a safe landing. First, a halon system certified to provide 3% halon for 90 minutes would continue to provide some protection after the halon decayed below the 3% level. It is also possible that the halon system may extinguish the fire. Rekindling of the fire may not necessarily be instantaneous upon decay of the halon, particularly after 90 minutes, which would allow cooling of the core. In the case of a self-oxygenating fire, the halon would prevent its spread to adjoining cargo, and it is likely that the source would fully expend long before the 90-minute halon system was depleted. Additionally, in the event that manual intervention was required, the additional firefighting equipment and associated training required as part of this proposal would be in place, and the crew would have 90 minutes to prepare for manual firefighting. The operator's training program would be required to consider this possibility.

As previously stated, the extended halon option would not require the extensive cargo compartment liner required by paragraph B.3. of AD 91–10–02. Instead, operators would be required to install an upgraded barrier between the passenger and cargo compartments, and to ensure that critical systems in the cargo compartment are adequately protected for the period between fire initiation and halon effectiveness. In conjunction with the continuous release of halon into the compartment, this would ensure similar benefits to those provided by the use of an extensive liner. Critical systems of concern include flight controls, electrical wiring, airplane structure, and the windows. Exclusion of critical systems from the cargo compartment, use of protective covers, and separation of critical components are methods of providing critical system protection.

The FAA recognizes that some critical systems could remain exposed in the compartment because of their inherent ability to withstand fire conditions, or due to other factors, such as their location in the compartment. In evaluating the methods used by operators who elect this proposed option, the FAA will use the requirements of FAR 25, Appendix F, Part III (Amdt. 25–60) to evaluate the adequacy of protective covers and exposed systems, unless more suitable criteria, such as test data from the FAA Technical Center, can be justified and approved by the FAA. Testing at the FAA Technical Center has shown that flames can break out and that fires can grow rapidly within moments of smoke detection. Because of this, a five-minute exposure period to fire will be assumed in assessing protective features. This five-minute criterion is based on a conservative estimate of the time required to manually confirm the fire after alarm, inform the flight deck, initiate ventilation shut-down and halon release, and for the halon to reach an effective concentration. If five minutes of protection cannot be adequately demonstrated, the FAA may require automatic ventilation shut-down and halon release on alarm, or the installation of a second detection means in the compartment to eliminate the time required to manually confirm the fire.

Proposed Omission of Method to Discharge Extinguishers in Containers

Several commenters recommend that the requirement of paragraph B.3.h. of AD 91–10–02 to provide a method to safely discharge extinguishers into containers be eliminated because no such means currently exists. The FAA concurs, based on FAA Technical Center results that indicate fighting fires in containers or under blankets could actually intensify the fire, and the fact that the options being offered in the proposed rule no longer rely on manual firefighting. The proposed rule reflects this.

Proposed Omission of Thermal Monitoring System Requirement

The firefighter option, provided by paragraph B.3. of AD 91–10–02, required the installation of a thermal monitoring system as a second means of fire detection over the existing smoke detection system. The FAA considered continuing to require the thermal monitoring system in this proposed rule, but determined that it should not be included. The FAA considers that the limited benefit of adding the thermal monitoring system does not justify its high cost for either the blanket/container option or the extended halon option.

The requirement for a thermal monitoring system first appeared in the original Combi AD, AD 89–18–12 R1, as part of the firefighter option. Two different roles for the system were envisioned. One role of the system was to complement the existing smoke detectors to ensure the earliest possible

warning, recognizing that any delay in detection could allow the fire to grow beyond the limited capabilities of the trained firefighter. Of particular concern were deep-seated and low smoke fires. The other role was to provide compartment temperature information to aid in deciding whether to expend the 15-minute halon knock-down system, required under that option, immediately or to attempt to manually fight the fire first. In either case, the requirement for the thermal monitoring system was closely associated with the use of trained firefighters. Since the new options offered in this proposed rule do not rely on trained firefighters, the requirement for a thermal monitoring system is unnecessary.

The FAA's justification for omitting the thermal monitoring system from the paragraph (b)(3) option of this proposed rule is that blankets/containers have demonstrated containment of fires for long time periods. Although smoke detection could be delayed, the contained fire would not be immediately threatening to the airplane, and any minor delay in detection would not prevent a safe diversion to the nearest suitable airport. In addition, limited testing at the FAA Technical Center using blankets has shown that the difference between detection times for smoke detection and infrared-based thermal monitoring systems is insignificant.

The FAA's justification for not requiring a thermal monitoring system for the extended halon option provided by paragraph (b)(4) of this proposed rule is that this option is similar to a Class C compartment, since both rely on the use of halon for fire control. The main difference between the extended halon option and an actual Class C compartment is that a Class C compartment requires a full liner and halon protection for the maximum diversion flight time. The role of the liner in Class C compartments is to contain the halon, such that a sufficient concentration is maintained, and to protect local systems prior to halon effectiveness. Although the option provided by proposed paragraph (b)(4) would not require this liner, it would provide the benefits of the liner. Halon concentration would be maintained for 90 minutes. This would probably require continuous release of halon into the compartment to ensure adequate concentration due to leakage. Operators would also be required to demonstrate adequate protection of critical systems, as previously discussed. The extended halon option of proposed paragraph (b)(4) therefore would provide a similar level of safety to a Class C compartment for 90 minutes. Smoke detectors alone have demonstrated acceptable performance in the past for Class C compartments. In addition, testing at the FAA Technical Center has shown that the difference between the time a fire in a polyethylene covered pallet is detected by a thermal detector and the time it is detected by a smoke detector is insignificant. Therefore, a thermal monitoring system is not necessary for the proposed paragraph (b)(4) option.

The FAA received several comments regarding the specific design of thermal monitoring systems. These comments have been addressed, below, from a general standpoint, although the thermal monitoring system requirement has been removed from the proposed rule.

One commenter recommends that threshold temperatures for the thermal monitor should be established just above the maximum expected ambient temperature, which is 160 degrees Fahrenheit. The commenter indicates that a lower threshold could be established, while preventing false alarms, by monitoring the rate of temperature rise and integrating the thermal monitoring system with smoke detection. The FAA concurs that providing the earliest detection with minimal false alarms for any fire detection system is ideal, and that monitoring the rate of temperature rise could play a role in obtaining earlier detection. Integrating a thermal monitoring system with the smoke detection possibly could provide earlier detection and minimize false alarms, although the FAA has no data to indicate that smoke detection systems alone are inadequate.

Proposed Omission of Extensive Liner Requirement

The paragraph B.3. option of AD 91–10–02 required the installation of an extensive cargo compartment liner. Under that option, the liner would have been required on all surfaces of the cargo compartment, with the exception of the floor. The intent of the requirement was to protect the critical systems and structure of the airplane until the trained firefighter was able to effectively control and extinguish the fire. The FAA received numerous comments concerning the severe cost and limited benefit of the extensive liner.

This rulemaking action proposes to remove the paragraph B.3. option, due to concerns about the effectiveness of manual firefighting, as previously discussed. That option would be replaced with two options: (1) The use of blankets/containers for all cargo, or (2) the installation of a 90-minute halon protection system. The FAA considered the cost to operators of existing Combi airplane designs in formulating the new options. The FAA considered continuing to require the extensive cargo compartment liner for the new options being proposed, but determined that such a liner is unnecessary.

A liner would have two roles: Containment of the fire until it is controlled, and containment of halon, if required (usually applies to lower lobe Class C compartments). FAA Technical Center testing has demonstrated that blankets/containers can effectively contain and control cargo fires, eliminating the need for a liner when these devices are used. The FAA considers that the extensive liner would not be necessary for the extended halon option, provided that critical systems and structure are protected for the period prior to halon effectiveness, and sufficient halon concentration is maintained in the compartment through continuous halon release.

Single Rule Approach for Wide-Body and Narrow-Body Airplanes

Two commenters to AD 91–10–02 recommend that separate AD's be prepared: One for wide-body airplanes and another for narrow-body airplanes. The FAA disagrees. The threat of an uncontrolled fire is equivalent for both types of airplanes. The FAA recognizes that the solutions may differ based on size of the airplane. However, airline route structure will also have an impact on the design. For instance, the design solution for wide-body Combis involved in long over-water flights would differ significantly from the same airplanes used on shorter route structures. It is impractical to address each operator's unique circumstance in this AD or through a collection of AD's, due to the varied airplane types and route structures. The FAA considers that the case with the most significant impact, from a design standpoint, is the use of wide-body airplanes on long route structures, such as some of the European and North American Boeing 747 Combi operations. The details of this proposed rule are based on this case, recognizing that the options being provided would ensure adequate safety for all Combi operations. The FAA fully understands that an alternative for some of the requirements, such as a reduction in the quantities of halon or protective breathing specified in this proposal, could be justified for some operators, such as short-range narrow-body airplane operators in Alaska. Operators who can demonstrate that full

compliance with the specific requirements of this proposed rule is not necessary in order to ensure adequate safety are encouraged to apply for approval of alternative methods of compliance with the proposed rule, as provided for by paragraph (d).

Proposed Change to Preflight Inspection Requirement

Several commenters recommend that a person other than the flight deck crewmember or firefighter be permitted to perform the preflight inspection of the cargo compartment required by paragraphs A. and B. of AD 89–18–12 R1 and AD 91–10–02. The FAA concurs. The intent of that requirement was to ensure that proper access was provided for manual firefighting and to provide a general familiarization with the type and layout of cargo in the compartment. This inspection was, in no manner, intended to relieve the pilot of his/her responsibility to ensure proper operation of the airplane, as required by FAR 91.3. Although the trained firefighter option has been eliminated from this proposed rule, the proposal retains the preflight inspection requirement for familiarization only, and includes an additional requirement for a crewmember to be assigned "firefighting" duties for each flight. Operators would be required to ensure that crewmembers assigned firefighting duties have received adequate training in performing preflight inspections, responding to alarms, and monitoring and controlling cargo compartment fires, based on the option selected. The preflight inspection would ensure a first hand knowledge of the cargo layout in the compartment in the event that a fire occurred. The intent of this inspection is not to verify correct loading of the compartment per the loading placards. The FAA intends this preflight inspection to be performed by the crewmember who has been assigned "firefighter" duties for the flight and who has received appropriate training as specified in this proposed rule. This crewmember would not necessarily need to be a member of the flight crew. As stated previously, however, this preflight inspection is not intended to relieve the pilot of responsibilities in accordance with FAR 91.3. The proposed rule reflects this.

Requirement for One-Minute Smoke Detection

AD 91–10–02 required that smoke detectors be upgraded to the one-minute detection criteria of FAR 25.858 (Amendment 25–54). This would continue to be required in this proposed rule. One commenter recommends that the criteria for smoke detection be an average detection time under 70 seconds with maximum allowable excursions to 100 seconds, in order to decrease the likelihood of false alarms. This commenter also proposes that smoke generation during testing continue beyond 60 seconds until smoke detection occurs. Approval of the commenter's proposal is not within the scope of this rulemaking action because it would impact future certification of all smoke detection systems. However, the FAA is currently in the process of evaluating this proposal, independent of this AD action.

The FAA recognizes that some existing smoke detection systems installed on older airplanes, which do not necessarily meet the FAR 25.858 one-minute detection criteria, may be adequate for the purposes of this proposed rule, particularly in light of the new options being proposed and the significant cost of implementing one-minute smoke detection systems on older airplanes. These older systems were certificated to the older FAA five-minute detection criteria. The FAA recognizes that, although certain systems may have been certificated to the five-minute criteria, they actually perform significantly better than the five-minute requirement. For instance, the FAA has reviewed Model 747–100/–200/–300 Combi certification test data, and determined that the existing smoke detection systems on those airplanes typically alarm within two minutes, and that most detections occur in a considerably shorter period of time. Detection delays would be most appreciable in small fires that produce little smoke, which are not immediately threatening to the airplane. Very little delay would occur in detection of the most threatening fires, which are those that erupt violently and grow quickly. The FAA would consider approving as alternative methods of compliance those existing smoke detection systems on older airplanes, which may not meet the FAR 25.858 one-minute detection criteria, if these systems have demonstrated sufficient early detection in testing and in service.

Proposed Increase in Protective Breathing/Garment Quantities

This rulemaking action also proposes to modify the quantity requirements for protective garments and protective breathing equipment (PBE). AD 91–10–02 does not specify a quantity of protective garments. This proposed rule specifies two sets of garments, which would provide for two persons to enter the compartment for manual firefighting. This proposed rule also would increase the amount of PBE protection required from 30 minutes to 30 minutes for two persons, plus an additional quantity of 90 minutes of PBE for one person, in order to allow for continuous monitoring of the compartment after alarm until the airplane has landed safely. This proposed rule would require that all PBE and protective garments be located outside the cargo compartment.

Proposed Change in Illumination Criteria

Several commenters recommend the use of the Boeing Model 747–400 Combi sidewall lighting configuration to meet the illumination requirement of paragraph B.3.f. of AD 91–10–02. The FAA concurs that the Model 747–400 lighting configuration is adequate, and the proposed rule reflects Model 747–400 lighting data. The FAA recognizes that the lighting requirement was included in the existing Combi AD as an integral part of the firefighter option. Because that option has been removed from this proposed rule, the lighting requirements for the blanket/container and extended halon options have been revised to allow for qualitative acceptance of existing lighting on older airplanes as the FAA determines to be appropriate on a case-by-case basis. The FAA also recognizes that tactile or low level lighting markers could be used to identify pathways in lieu of pathway lighting. Such methods will be evaluated by the FAA through alternative methods of compliance requests. (Pathways include longitudinal and cross aisles.)

One commenter suggests that the lighting criteria of paragraph B.3.f. of AD 91–10–02 would increase the risk of fire in the cargo compartment. The FAA has no data to support this. The proposed rule also provides for a qualitative evaluation of existing systems to determine if they are adequate to meet the intent of the requirement.

Proposed Extension of Compliance Time

Several commenters request extensions of compliance times for various requirements of paragraph B. of AD 91–10–02. The FAA concurs that it is unrealistic to require full compliance by May 3, 1993, for the requirements of paragraph B. of the existing AD, particularly in light of the significant changes which are being proposed in this action. These commenters also recommend that compliance dates be coordinated with the Joint Airworthiness Authorities (JAA), since this rulemaking action has a worldwide impact. The FAA concurs and has been coordinating all portions of this proposed rule with the JAA and

Transport Canada Aviation. This action proposes to extend the compliance period for these requirements [specified in paragraph (b) of this proposed rule] by approximately two years.

Other Issues

Several commenters recommend that cargo accessibility could be adequately demonstrated in a ground test, rather than a flight test. The FAA concurs, and the proposed rule reflects this.

One commenter recommends the removal of the Model DC-9-80 series airplanes from the applicability of the rule because these airplanes do not have certified main deck cargo compartments. The FAA concurs and the proposed rule reflects this.

One commenter requests that the individual airline's safety record for cargo handling be taken into account in establishing requirements. The FAA agrees with the commenter, but such a provision in the proposed rule is impractical. In the past, the FAA has taken airline safety records, as well as airplane size and airline route structure, into account in granting alternative methods of compliance with AD 89-18-12 R1. The FAA will continue to recognize that the specific requirements of this proposed rule can be "tailored," based on the individual circumstances of each operator, through requests for approval of alternative methods of compliance.

One commenter disagrees with relaxation of the requirements of AD 91-10-02 for economic reasons. The FAA concurs. Although significant changes are being proposed in this rulemaking action, the options being presented have been determined to provide a greater level of safety than those specified in AD 91-10-02. These options have the additional benefit of being more acceptable to the affected operators from both economic and operational standpoints.

One commenter states that crew notification of a fire is one of the most important safety measures. The FAA concurs with the comment, and considers that the options being offered in this proposed rule ensure adequate crew notification.

Cost Impact

There are approximately 278 Boeing Models 707, 727, 737, 747, and 757 series airplanes and 124 McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that approximately 80 Boeing Model 707, 727, 737, 747, and 757 series airplanes, and 79 McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes, of U.S. registry have been certificated to operate with a Class B main deck cargo compartment. Many of these airplanes are operated permanently in the all-passenger configuration and are, therefore, not affected by this rule. Approximately 40 of these airplanes, currently operated by U.S. operators in the mixed cargo/passenger configuration, are affected by this amendment.

The design alternative selected by the operator and the type of airplane will have a significant impact on the cost of complying with this AD. The highest cost option is expected to be the conversion to a Class C compartment, as defined in paragraph (b)(1) of this proposal.

A conservative cost estimate for incorporating the extended halon option into Boeing Model 747 airplanes, based upon costs of required materials, labor, and testing, is $2,000,000 per airplane. A conservative estimate for incorporating the blanket/container option on Boeing Model 747 airplanes, based upon the costs of required materials, labor, and testing, is $200,000.

The FAA is not aware of any U.S. Model 747 Combi operators. Most U.S.-registered Combis are Boeing Models 727 and 737 airplanes operated in Alaska. The FAA has granted these operators alternative methods of compliance with AD 89-18-12 R1 in the past. These alternative methods of compliance are acceptable to meet the intent of this proposed rulemaking action. Therefore, this proposed rulemaking should incur no additional cost on U.S operators.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6986 (56 FR 20529, May 6, 1991) and by adding a new airworthiness directive (AD), to read as follows:

Boeing and McDonnell Douglas: Docket No. 92-NM-67-AD. Supersedes AD 91-10-02, Amendment 39-6986.

Applicability: Boeing Models 707, 727, 737, 747, and 757 series airplanes and McDonnell Douglas Models DC-8, DC-9, and DC-10 series airplanes; equipped with a main deck Class B cargo compartment, as defined by Federal Aviation Regulations (FAR) 25.857(b) or its predecessors, with a volume exceeding 200 cubic feet; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To minimize the hazard associated with a main deck Class B cargo compartment fire, accomplish the following:

(a) Within one year after May 3, 1990 (the effective date of Amendment 39-6557, AD 89-18-12 R1), or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the following in accordance with the appropriate technical data approved by the Manager, Seattle Aircraft Certification Office (for Boeing series airplanes), FAA, Transport Airplane Directorate; or the Manager, Los Angeles Aircraft Certification Office (for McDonnell Douglas series airplanes), FAA, Transport Airplane Directorate:

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

"FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT: Prior to flight, a flight deck crewmember must make a visual inspection throughout the Class B cargo compartment to verify access to cargo and the general fire security of the compartment after the cargo door is closed and secured."

Note: This visual inspection is in no manner intended to relieve the pilot of his/her responsibility to ensure safe operation of the airplane, as required by FAR 91.3.

(2) Incorporate the following systems and equipment:

(i) Provide a minimum of 48 lbs. Halon 1211 fire extinguishant, or its equivalent, in portable fire extinguisher bottles readily available for use in the cargo compartment. At least two bottles must be a minimum of 16 lb. capacity.

(ii) Provide at least two Underwriters Laboratories (UL)2A (2–12 gallon) rated water portable fire extinguishers, or its equivalent, adjacent to the cargo compartment entrance for use in the compartment.

(iii) Provide a means for two-way communication between the flight deck and the interior of the cargo compartment.

(iv) Install placards in conspicuous place(s) within the cargo compartment clearly defining the cargo loading envelope and limitations that provide sufficient access of sufficient width for firefighting along the entire length of at least two sides of a loaded pallet or container. Amend the appropriate Weight and Balance and loading instructions by description and diagrams to include this information.

(3) Incorporate the following systems and equipment:

(i) Provide appropriate protective garments stored adjacent to the cargo compartment entrance.

(ii) Provide a minimum of 30 minutes of protective breathing. This equipment must meet the requirements of Technical Standard Order (TSO) C–116, Action Notice 8150.2A, or equivalent, and be stored adjacent to the cargo compartment entrance.

(b) Within thirty months after the effective date of this AD, or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the requirements of paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD:

(1) *Option 1:* Modify the Class B cargo compartment to comply with the requirements for a Class C cargo compartment, as defined in FAR 25.855 (Amdt. 25–60), 25.857(c), and 25.858 (Amdt. 25–54).

(2) *Option 2:* Modify all main deck Class B cargo compartments to require the following placard installed in conspicuous locations approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate (for Boeing airplanes), or the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate (for McDonnell Douglas airplanes), throughout the compartment:

"Cargo carried in this compartment must be loaded in an approved flame penetration-resistant container meeting the requirements of FAR 25.857(c) with ceiling and sidewall liners and floor panels that meet the requirements of FAR 25, Appendix F, Part III, (Amdt. 25–60)."

(3) *Option 3:* In addition to the requirements of paragraph (a)(2) of this AD, accomplish the following in accordance with technical data approved by the Manager, Seattle Aircraft Certification Office (for affected Boeing series airplanes), or the Manager, Los Angeles Aircraft Certification Office (for affected McDonnell Douglas series airplanes):

(i) Carriage of all cargo in Class B cargo compartments must meet the requirements of (b)(3)(i)(A) or (b)(3)(i)(B) of this AD:

(A) Cover cargo with fire containment covers (FCC).

(B) Carry cargo in fire containment containers.

(ii) Provide a smoke or fire detection system in the Class B cargo compartment that meets the requirements of FAR 25.858 (Amdt. 25–54) and also provides an aural and visual warning to the crewmembers in the passenger compartment.

(iii) Provide a barrier between the Class B cargo compartment and the passenger compartment to prevent the penetration of smoke or flames from the cargo compartment into the passenger compartment. The barrier must extend from the cargo compartment floor to the upper crown area of the fuselage, and from the right sidewall to the left sidewall of the cargo compartment, completely isolating the cargo compartment from the passenger compartment. The barrier and associated seals/interfaces must meet the requirements of FAR 25, Appendix F, Part III (Amdt. 25–60).

(iv) Provide illumination of the Class B cargo compartment as specified in paragraphs (b)(3)(iv)(A) and (b)(3)(iv)(B) of this AD:

(A) General area illumination of the cargo with an average illumination of 0.1 foot-candle measured at 40-inch intervals both at one-half the pallet or container height, and at the full pallet or container height, or as approved by the FAA.

(B) Illumination of the longitudinal access pathways, required by paragraph (a)(2)(iv) of this AD, with an average illumination of 5 foot-candles when measured at 40 inch intervals along a line that is within 2 inches of and parallel to the floor centered on the pathway, or illumination under visibility conditions likely to occur in the cargo compartment in the event of a fire.

(v) Establish FAA-approved procedures and training as specified in paragraphs (b)(3)(v)(A) and (b)(3)(v)(B) of this AD:

(A) Use and maintenance of items required by paragraph (b)(3)(i).

(B) Responding to alarms, and monitoring and controlling Class B cargo compartment fires.

(vi) Provide a viewport into the Class B cargo compartment from the passenger compartment. The viewport must be located such that a crewmember can readily identify the overall smoke conditions in the compartment prior to entering it.

(vii) Demonstrate the following features and functions, specified in paragraphs (b)(3)(vii)(A), (b)(3)(vii)(B), and (b)(3)(vii)(C) of this AD:

(A) Smoke or Fire Detection System, required by paragraph (b)(3)(ii) of this AD, by flight test.

(B) Prevention of smoke penetration into occupied compartments [Refer to FAR 25.857(b)(2) and 25.855(e)(2).], by flight test.

(C) Cargo accessibility, as specified in paragraph (a)(2)(iv) of this AD.

(viii) Provide the following systems and equipment:

(A) Provide appropriate protective garments for two persons stored in the passenger compartment, adjacent to the Class B cargo compartment entrance.

(B) Provide a minimum of 120 minutes of protective breathing for one person, and an additional 30 minutes of protective breathing for an additional person. This equipment must meet the requirements of Technical Standard Order (TSO) C–116, Action Notice 8150.2A, or equivalent, and at least 30 minutes of the total protective breathing must be stored adjacent to the Class B cargo compartment entrance. All protective breathing equipment must be located outside the cargo compartment.

(ix) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

"FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT: Prior to flight, a crewmember who is assigned firefighting responsibility for the flight must make a visual inspection throughout the Class B cargo compartment for familiarization, after the cargo door is closed and secured."

Note: This visual inspection is in no manner intended to relieve the pilot of his/her responsibility to ensure safe operation of the airplane, as required by FAR 91.3.

(4) *Option 4:* In addition to the requirements of paragraph (a)(2) of this AD, accomplish the following in accordance with technical data approved by the Manager, Seattle Aircraft Certification Office (for affected Boeing series airplanes), or the Manager, Los Angeles Aircraft Certification Office (for affected McDonnell Douglas series airplanes):

(i) Provide a cargo compartment fire extinguishing system in the Class B cargo compartment that provides an initial fire extinguishant concentration of at least 5 percent of the empty compartment volume of Halon 1301 or equivalent, and a fire suppression extinguishant concentration of at least 3 percent of the empty compartment volume of Halon 1301 or equivalent, for a period of time not less than 90 minutes.

(ii) Provide a smoke or fire detection system in the Class B cargo compartment that meets the requirements of FAR 25.858 (Amdt. 25–4) and also provides an aural and visual warning to the crewmembers in the passenger compartment.

(iii) Provide a means from the flight deck to shut off ventilation system inflow to the Class B cargo compartment.

(iv) Provide a barrier between the Class B cargo compartment and the passenger compartment to prevent the penetration of smoke or flames from the cargo compartment into the passenger compartment. The barrier must extend from the cargo compartment floor to the upper crown area of the fuselage, and from the right sidewall to the left sidewall of the cargo compartment, completely isolating the cargo compartment from the passenger compartment. The barrier and associated seals/interfaces must meet the requirements of FAR 25, Appendix F, Part III (Amdt. 25–60).

(v) Provide appropriate protection of the cockpit voice and flight data recorders, and all systems or components required for safe flight and landing of the airplane, unless it can be demonstrated that these systems are not susceptible to damage in the event of a fire in the Class B cargo compartment.

(vi) Provide illumination of the Class B cargo compartment as specified in paragraphs (b)(4)(vi)(A) and (b)(4)(vi)(B) of this AD:

(A) General area illumination of the cargo with an average illumination of 0.1 foot-candle measured at 40-inch intervals both at one-half the pallet or container height, and at the full pallet or container height, or as approved by the FAA.

(B) Illumination of the longitudinal access pathways, required by paragraph (a)(b)(iv) of this AD, with an average illumination of 5 foot-candles when measured at 40 inch intervals along a line that is within 2 inches of and parallel to the floor centered on the pathway, or illumination under visibility conditions likely to occur in the cargo compartment in the event of a fire, as approved by the FAA.

(vii) Establish FAA-approved procedures and training for responding to alarms, and monitoring and controlling cargo compartment fires.

(viii) Provide a viewport into the Class B cargo compartment from the passenger compartment. The viewport must be located such that a crewmember can readily identify the overall smoke conditions in the compartment prior to entering it.

(ix) Demonstrate the following features and functions:

(A) Fire extinguishant concentration, required by paragraph (b)(4)(i) of this AD, by flight test.

(B) Smoke or fire detection system, required by paragraph (b)(4)(ii) of this AD, by flight test.

(C) Prevention of smoke penetration into occupied compartments [Refer to FAR 25.857(b)2 and 25.855(e)2.], demonstrated by flight test.

(D) Cargo accessibility, as specified in paragraph (a)(2)(iv) of this AD.

(x) Provide the following systems and equipment:

(A) Provide appropriate protective garments for two persons stored in the passenger compartment, adjacent to the Class B cargo compartment entrance.

(B) Provide a minimum of 120 minutes of protective breathing for one person, and an additional 30 minutes of protective breathing for an additional person. This equipment must meet the requirements of Technical Standard Order (TSO) C-16, Action Notice 8150.2A, or equivalent, and at least 30 minutes of the total protective breathing must be stored adjacent to the Class B cargo compartment entrance. All protective breathing equipment must be located outside the cargo compartment.

(xi) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement:

"FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT: Prior to flight, a crewmember who is assigned firefighting responsibility for the flight must make a visual inspection throughout the Class B cargo compartment for familiarization, after the cargo door is closed and secured."

Note: This visual inspection is in no manner intended to relieve the pilot of his/her responsibility to ensure safe operation of the airplane, as required by FAR 91.3.

(c) Compliance with paragraphs (b)(1) or (b)(2) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD. Compliance with paragraphs (b)(3) or (b)(4) of this AD constitutes terminating action for the requirements of paragraphs (a)(1) and (a)(3) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate (for Boeing series airplanes); or the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate (for McDonnell Douglas series airplanes). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager of the Seattle ACO, or the Manager of the Los Angeles ACO, as appropriate.

Note: Alternative methods of compliance previously granted for Amendment 39-557, AD 89-18-12 R1; or Amendment 39-986, AD 91-60-02; continue to be considered as acceptable alternative methods of compliance for this amendment.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19485 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-137-AD]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Model DHC-7 series airplanes. This proposal would require installation of a water deflector over the elevator servo drum assembly. This proposal is prompted by a report of uncommanded pitch excursion that occurred during flight while the autopilot was engaged, apparently caused by ice accumulation in the elevator servo drum assembly. The actions specified by the proposed AD are intended to prevent freezing of the elevator servo drum assembly, which could lead to an uncommanded pitch excursion with the autopilot engaged and reduced controllability of the aircraft.

DATES: Comments must be received by September 22, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-137-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–137–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–137–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on all de Havilland Model DHC–7 series airplanes. Transport Canada Aviation advises that a case has been reported of uncommanded pitch excursion during flight, while the autopilot was engaged. Investigation has determined that water ingested into the elevator servo drum assembly had subsequently frozen, thus restricting elevator servo drum movement. The autopilot system generated excessive commands in order to overcome this restriction. A sudden release of the frozen drum, after compensatory autopilot elevator input, caused a rapid elevator deflection, which resulted in pitch excursion. This condition, if not corrected, could result in freezing of the elevator servo drum assembly, which could lead to an uncommanded pitch excursion with the autopilot engaged and reduced controllability of the airplane.

De Havilland, Inc. has issued Service Bulletin 7–55–10, dated October 25, 1991, which describes procedures for installation of Modification No. 7/2605, which involves installing a water deflector onto the front spar of the vertical stabilizer, directly above the elevator servo drum assembly. The water deflector will shield the assembly from draining moisture and prevent restriction of the elevator servo and cable drum. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–92–11 in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of a water deflector onto the front spar of the vertical stabilizer, directly over the elevator servo drum assembly. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $75 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $17,500. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 92–NM–137–AD.

Applicability: All Model DHC–7 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent freezing of the elevator servo drum assembly, which could lead to an uncommanded pitch excursion with the autopilot engaged and reduced controllability of the aircraft, accomplish the following:

(a) Within 60 days after the effective date of this AD, install a water deflector onto the front spar of the vertical stabilizer, directly over the elevator servo assembly, Modification No. 7/2605, in accordance with paragraph III. of de Havilland Service Bulletin 7–55–10, dated October 25, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 23, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19484 Filed 8–14–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92-NM-133-AD]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model DHC-7 series airplanes. This proposal would require a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, and modification, if necessary. This proposal is prompted by a report of a takeoff procedure that was completed with an inadvertent flap setting of 0 degrees. The actions specified by the proposed AD are intended to prevent a takeoff with an incorrect flap indication of 25 degrees when the flaps are retracted, which could lead to insufficient lift and increased takeoff distance, resulting in reduced controllability of the airplane.

DATES: Comments must be received by September 21, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-133-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-133-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-133-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC-7 series airplanes. Transport Canada Aviation advises that a case has been reported of a takeoff procedure that was completed with an inadvertent flap setting of 0 degrees. The flap selector had been set at 25 degrees and the flap indicator was reading 25 degrees. A trailing flap caution light was illuminated during takeoff. The caution light indicated a trailing flap relay failure, which caused the flaps to "lock" at 0 degrees; they could be retracted, but not extended. The investigation established that two resistors, 2751-R3 and 2751-R4, supplied as part of the flap position trim control box assembly of Modification No. 7/2093, were interchanged, resulting in an erroneous reading on the flap indicator. This combination of problems caused the flaps to "lock" at 0 degrees and the flap indicator to incorrectly read 25 degrees. This condition, if not corrected, could lead to insufficient lift and increased takeoff distance, resulting in reduced controllability of the airplane.

De Havilland, Inc., has issued Alert Service Bulletin A7-27-86, dated December 19, 1991, which describes procedures for a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, and modification, if necessary. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF-92-13, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, and modification, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,500. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal

would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 92–NM–133–AD.

Applicability: Model DHC–7 series airplanes; serial numbers 3 and subsequent, having Modification No. 7/2093 installed, except airplanes fitted with Customer Special Installation 78358 (flap indication rework); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.To prevent a takeoff with an incorrect flap indication, which could lead to insufficient lift and increased takeoff distance, resulting in reduced controllability of the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, in accordance with paragraph III. of de Havilland Alert Service Bulletin A7–27–86, dated December 19, 1991. If any discrepancies are detected, prior to further flight, modify the assembly in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19491 Filed 8–14–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

Revision of the Commerce Control List; Chemical Weapons Precursors

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of receipt of petition for rulemaking and request for public comments.

SUMMARY: The Bureau of Export Administration maintains export controls on chemical weapons precursors (classified under ECCN 1C60C on the Commerce Control List (CCL)) to most destinations. However, General License G–DEST is available for one sample shipment of a 55-gallon container (209 liters) or less of each chemical to any one consignee per calendar year except to certain specified countries. General license G–DEST is also available, except to Country Groups S and Z, and the South African military and policy, for compounds that are created from chemicals controlled under ECN 1C60C provided that the compound itself is not controlled. Mixtures that contain chemicals controlled under ECCN 1C60C are controlled as precursors, except when the precursor chemical is merely an impurity that was not intentionally added or is a normal ingredient in consumer goods intended for retail sales.

Several members of the business community have requested revisions to the controls on mixtures containing chemical weapons precursors revised to cover additional business situations. BXA, in consultation with other government agencies, has explored several ways of doing this. One way is to allow shipments of mixtures under general license G–DEST if the precursor chemical comprises is less than a given percent by weight for dry mixtures or volume for liquids. G–DEST would continue to be available for precursor chemicals that are a normal ingredient in consumer goods intended for retail sales and when the precursor is merely an impurity that was not intentionally added.

This notice of receipt of petition and request for comments is being issued to solicit public comments on the specific situations and problems that the business community faces when exporting mixtures containing chemical weapons precursors. Upon review of public comments, BXA will consider publishing a rule to revise the mixture provision for export of chemicals classified under ECCN 1C60C on the CCL.

DATES: Comments must be received by September 16, 1992.

ADDRESSES: Written comments (six copies) should be sent to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Regulations Branch, Office Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–4819.

Authority: Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended.

Dated: August 10, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92–19370 Filed 8–14–92; 8:45 am]

BILLING CODE 3510–DT–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Proposed Rule to Regulate Under the Consumer Product Safety Act Risks of Injury Associated With Lighters That Can Be Operated by Children

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has initiated a rulemaking proceeding to develop mandatory requirements to reduce risks of injury that are associated with

cigarette lighters and similar lighters because such lighters can be operated by young children. In this notice, the Commission proposes, under section 30(d) of the Consumer Product Safety Act, to issue any rule or to take any other regulatory action to address risks of injury that are associated with lighters due to the fact that they can be operated by children under the Consumer Product Safety Act (CPSA) rather than the Federal Hazardous Substances Act (FHSA) or the Poison Prevention Packaging Act (PPPA).

DATES: Comments concerning this proposal must be received in the Office of the Secretary by September 16, 1992.

ADDRESSES: Written comments should be addressed to Sheldon Butts, Deputy Secretary, Comment CC 92–2, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and mailed to that address or delivered to room 528, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Harleigh Ewell, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980.

SUPPLEMENTARY INFORMATION

A. Introduction

The Commission proposes to regulate under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051–2083) those risks of death and injury that are associated with lighters intended for igniting smoking materials and that are due to the fact that the lighters can be operated by young children. Such risks would be regulated under the CPSA rather than under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261–1277) or the Poison Prevention Packaging Act (PPPA) (15 U.S.C. 1471–1476).

Section 30(d) of the CPSA (15 U.S.C. 2079(d)) provides that a risk of injury associated with a consumer product which could be eliminated or reduced to a sufficient extent by action under the FHSA or the PPPA may be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to regulate such a risk of injury under the CPSA. Elsewhere in this issue of the **Federal Register**, the Commission is proposing a rule under the CPSA that would impose child-resistance requirements on disposable lighters and novelty lighters. The comment period on that proposal in 75 days. Section 30(d) provides, however, that the comment period on a proposal to regulate under the CPSA may not exceed 30 days. Accordingly, comments on this proposed rule under section 30(d) are due September 16, 1992.

The Commission has considered available information concerning risks of death and injury associated with lighters that can be operated by children, and the applicable provisions of the CPSA, the FHSA, and the PPPA. The Commission recognizes that it might be possible to adequately reduce those risks by action taken under the FHSA or the PPPA. Nevertheless, the Commission has preliminarily determined that it is in the public interest to regulate those risks of injury under the CPSA rather than the FHSA or the PPPA because the authority of the CPSA is more appropriate to address risks of injury associated with a mechanical, flame-producing device than the authorities of the FHSA or the PPPA.

B. Background

In the **Federal Register** of March 3, 1988 (53 FR 6833), the Commission published an advance notice of proposed rulemaking (ANPR) to begin a proceeding for development of requirements for lighters to address risks of injuries from fires started by children playing with lighters. In the ANPR, the Commission estimated that during the years 1980 through 1985, residential fires started by children playing with lighters claimed an average of 120 lives each year. The Commission estimated that during the same period over 750 persons were injured each year, on average, in residential fires started by children playing with lighters.

Lighters are flame-producing devices used by consumers primarily to light cigarettes and other smoking materials. More than 500 million lighters are sold each year in the United States. Disposable butane lighters account for approximately 95 per cent of those sales. These lighters are filled with liquid butane under pressure, which is released from a fuel reservoir in a gaseous state. Approximately five percent of all lighters sold in the United States are refillable. Some refillable lighters use petroleum distillate fuel; others use butane. Most lighters, both disposable and refillable, utilize a flint and thumb-activated roller mechanism to ignite the fuel. Others have an electronic ignition mechanism.

The ANPR stated that the rulemaking proceeding which it initiated is authorized by the CPSA, the FHSA, and the PPPA. In the description of regulatory options under consideration by the Commission, the ANPR discussed the possibility of issuing a consumer product safety standard under provisions of the CPSA, a banning rule under provisions of the FHSA, and a rule to establish requirements to make lighters "significantly difficult for children under five years of age" to operate under provisions of the PPPA.

C. Statutory Authority

1. The Consumer Product Safety Act

A lighter is a "consumer product" as that term is defined by section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1), because it is an article which is produced or distributed for sale to consumers for use in or around a household, in recreation, or in other similar places and activities. Sections 7 and 9 of the CPSA (15 U.S.C. 2056, 2058) authorize the Commission to issue a consumer product safety standard consisting of labeling or performance requirements for a consumer product if those requirements are "reasonably necessary to prevent or reduce an unreasonable risk of injury" associated with a consumer product.

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires each manufacturer of a consumer product that is subject to a consumer product safety standard to issue a certificate of compliance stating that the product conforms to all applicable consumer product safety standards. Section 14(c) of the CPSA requires that the certificate of compliance must be based upon a test of each product or a "reasonable testing program." Section 14(b) of the CPSA authorizes the Commission to issue rules to prescribe a reasonable testing program. Section 14(c) of the CPSA authorizes the Commission to issue rules requiring labels containing the date and place of manufacture and a suitable identification of the manufacturer, unless the product bears a private label, in which case the label shall identify the private labeler and contain a code mark that will permit the seller of the product to identify the manufacturer upon the request of the purchaser. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules requiring manufacturers to maintain records of the testing specified in any rule prescribing a reasonable testing program.

Section 9(g)(2) of the CPSA authorizes the Commission to issue rules prohibiting the stockpiling of products that are subject to a consumer product safety rule. Stockpiling means the manufacturing or importing of a product between the date of promulgation of the consumer product safety rule and its effective date at a rate that is established by the rule and is significantly greater than the rate at which such product was produced or imported during a base period ending

before the promulgation of the consumer product safety rule.

2. The Federal Hazardous Substances Act

Butane or petroleum distillate fuel contained within a lighter meets the definition of the term "hazardous substance" in section 2(f)1(A) of the FHSA (15 U.S.C. 1261(f) 1(A)) because it is "flammable," and in some cases is "toxic" or "generates pressure," and may cause substantial personal injury or illness as a proximate result of customary or reasonably foreseeable use. Except for certain lighters containing petroleum distillate fuel that have been exempted at 16 CFR 1500.83(a)(20), lighters which contain fuel when sold to consumers are subject to the labeling provisions of section 2(p) of the FHSA (15 U.S.C. 1261(p)) because they contain a hazardous substance which is intended or packaged in a form suitable for use in the household.

Section 3(b) of the FHSA (15 U.S.C. 1262(b)) authorizes the Commission to issue rules to prescribe special labeling requirements for hazardous substances intended for use in the household if the Commission determines that the labeling specified by section 2(p) of the FHSA is not adequate to protect the public health and safety in view of the special hazard presented by that substance. Section 2(q)(1)(B) of the FHSA (15 U.S.C. 1261(q)(1)(B)) authorizes the Commission to issue a rule banning a hazardous substance intended for use in the household if the Commission determines that, notwithstanding any labeling which is or could be required by the FHSA, the degree or nature of the hazard is so great that protection of the public health and safety can be adequately served only by keeping the product out of channels of interstate commerce. A banning rule issued under section 2(q)(1)(B) of the FHSA could take the form of a conditional ban: That is, a rule banning all lighters that do not meet certain performance or design requirements specified in the rule.

3. The Poison Prevention Packaging Act

Sections 2, 3, and 5 of the PPPA (15 U.S.C. 1471, 1472, and 1474) authorize the Commission to issue a rule to require packaging that is "significantly difficult" for children younger than five years of age to open or "obtain a toxic or harmful amount" of the substance contained therein for any substance which is a "hazardous substance" as that term is defined in the FHSA. To issue such a rule, the Commission must make and support findings that child-resistant packaging is required to protect children from serious personal injury or illness from "handling, using, or ingesting" the substance. As noted above, the fuel contained within a lighter is a "hazardous substance" as that term is defined in the FHSA. A lighter meets the definition of the term "package" set forth in section 2(3) of the PPPA (15 U.S.C. 1471(3)) because it is the "immediate container" in which a hazardous substance is contained for use by individuals in a household.

Section 4(a) of the PPPA (15 U.S.C. 1473(a)) provides that for the purpose of making any substance which is subject to requirements for child-resistant packaging available to elderly or handicapped persons, the manufacturer may package that substance in conventional packaging in one size, provided that (1) the substance is also supplied in child-resistant packaging; and (2) the conventional packaging is labeled with the statement "This package for households without young children."

D. Preliminary Determination of Most Appropriate Statutory Authority

The Commission preliminarily determines that the provisions of the CPSA are most appropriate for development of requirements for lighters to address risks of injury associated with lighters that can be operated by children. Those risks of injury arise because lighters are mechanical devices intended to produce flame and can be operated by children who do not appreciate all of the consequences of using the product. Those consequences include the ignition of clothing and other articles in the household, and may result in injury or death of the child operating the lighter, or other persons.

The CPSA includes provisions authorizing the Commission to issue performance and labeling requirements applicable to the lighter when such requirements are "reasonably necessary" to eliminate or reduce an unreasonable risk of injury associated with that product. This authority is suitable for issuing requirements to address hazards associated with young children starting fires with lighters.

The CPSA also authorizes the Commission to issue certification rules for products subject to a consumer product safety standard. Such rules may contain a prescribed testing program upon which the certificate of the manufacturer or private labeler is based. The effectiveness of the rule for lighters that is proposed elsewhere in this issue of the **Federal Register** depends in large part on the testing conducted by the manufacturer under the certification rule. It is possible that similar testing requirements could be promulgated under the authority of section 10(a) of the FHSA, 15 U.S.C. 1269(a), that the Commission may issue "regulations for the efficient enforcement" of the FHSA. However, the authority of the CPSA is more explicit in this regard.

Section 9(g)(2) of the CPSA, 15 U.S.C. 2058 (g)(2), authorizes the Commission to issue stockpiling rules for products subject to a consumer product safety rule. Stockpiling rules prevent the manufacture or importation of excessive numbers of products that do not comply with the rule. The Commission has determined that a stockpiling rule is desirable for the proposed standard for lighters. Such a rule could not be issued under either the FHSA or the PPPA.

The FHSA includes provisions which authorize the Commission to require special labeling for, and in some circumstances to ban, a household product that contains or consists of a "hazardous substance." Provisions of the FHSA authorize the Commission to regulate lighters because they are containers of lighter fuel, which is a "hazardous substance" as that term is defined in the FHSA. No provision of the FHSA authorizes the Commission to address any hazard which is associated with the mechanical operation of a lighter as a flame-producing device.

The PPPA authorizes the Commission to regulate a lighter as a "package" containing a "hazardous substance"—the lighter fuel. Under the PPPA, the Commission may issue a rule requiring the "package"—that is, the lighter—to be "significantly difficult" for children younger than five years of age "to open or obtain a toxic or harmful amount of the substance contained therein." However, the ability of young children "to open" the lighter or "obtain a toxic or harmful amount" of the fuel contained within the lighter is not the risk of injury associated with lighters under consideration by the Commission. Rather, it is the risk of death and injury from fires started by children with lighters. This risk arises from the mechanical operation of the lighter, and the ability of young children to manipulate the lighter to produce a flame. Additionally, the PPPA allows the manufacturer of a substance subject to requirements for special packaging to package that substance in conventional packaging which is not child-resistant if the substance is also distributed in child-resistant packages, and the packages which are not child resistant are labeled "This package for households without young children." This provision, by allowing the marketing of non-child-resistant lighters

of the types covered by the rule, could significantly reduce the effectiveness of the rule to reduce the risk of injury.

E. Impact on Small Businesses

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small businesses. The RFA further provides, however, that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the rule, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The regulation proposed below, if issued on a final basis, will not by itself impose any legal or other obligation on any person or firm. The rule would simply express the Commission's determination that any action taken to eliminate or reduce risks of injury associated with lighters that can be operated by children will be taken under the authority of the CPSA rather than the FHSA or the PPPA.

If the Commission issues a final rule based on the proposal published below, and then decides to issue a consumer product safety standard or to take other action to address the risks of injury associated with lighters that can be operated by children, the Commission will be required to follow all applicable provisions of the CPSA before it can impose any obligation on any person or firm.

Because a final rule based on the proposal published below imposes no obligation on any person or firm, the Commission hereby certifies that a rule based on the proposal, if issued on a final basis, will not have a significant economic impact on a substantial number of small businesses.

F. Environmental Considerations

The rule proposed below falls within the categories of Commission action described in 16 CFR 1021.5(c) as having little or no potential for affecting the human environment. For that reason, neither an environmental assessment nor an environmental impact statement is required.

G. Conclusion and Proposal

After consideration of the information discussed above, the Commission preliminarily finds that if regulatory action is needed to address risks of injury associated with lighters due to the fact that they can be operated by children, it would be in the public interest to regulate such risks under the CPSA rather than the FHSA or the PPPA. This proposal does not affect other hazards associated with lighters, such as that some lighters are subject to FHSA labeling because the lighters contain fuel which is flammable or toxic or generates pressure.

Provisions of the FHSA and the PPPA authorize the Commission to address risks of injury associated with the fuel contained within a lighter because the fuel is a "hazardous substance" as that term is defined by the FHSA. However, a lighter is more than a container or a package of a hazardous substance. It is a device which incorporates a mechanism for igniting the fuel and is intended to be operated to produce a flame.

The Commission preliminarily determines that the provisions of the CPSA are the most appropriate to address risks of injury associated with a mechanical device due to the fact that it can be operated by children to produce flame. The Commission also preliminarily determines that it is in the public interest to regulate this risk associated with lighters under the CPSA because it is desirable to issue certification and stockpiling rules in connection with the requirements applicable to the performance of lighters; such rules are most appropriate, or only available, under the CPSA.

Interested persons are invited to submit written comments by September 16, 1992. Comments may be accompanied by written data, views, and arguments, and should be addressed to the Secretary, Consumer Product Safety Commission, Washington, DC 30307.

Comments that are received on the proposed rule may be seen in the Commission's Public Reading Room, 5401 Westbard Avenue, Room 528, Bethesda, Maryland, between 8:30 a.m. and 5 p.m., Monday through Friday, except holidays.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Infants and children.

For the reasons given above, the Commission proposes to amend title 16, chapter II, subchapter B, of the Code of Federal Regulations as follows:

PART 1145—REGULATION OF PRODUCTS SUBJECT TO ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

1. The authority citation for part 1145 continues to read as follows:

Authority: Sec. 30(d), Public Law 92–573, 86 Stat. 1231, as amended 90 Stat. 510; 15 U.S.C. 2079(d).

2. A new § 1145.16 is added to read as follows:

§ 1145.16 Lighters that are intended for igniting smoking materials and that can be operated by children; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act any risks of injury associated with the fact that lighters intended for igniting smoking materials can be operated by young children, rather than regulate such risks under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act of 1970.

(b) Therefore, if the Commission finds regulation to be necessary, risks of death or injury that are associated with lighters that are intended for igniting smoking materials and that can be operated by young children shall be regulated under one or more provisions of the Consumer Product Safety Act. Other risks associated with such lighters based on the fact that the lighters contain a hazardous substance shall continue to be regulated under the Federal Hazardous Substances Act.

Dated: August 7, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–19261 Filed 8–14–92; 8:45 am]

BILLING CODE 6355–01–M

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16 CFR Part 1210

Proposed Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to require that disposable and novelty lighters meet specified requirements for child-resistance. The proposed requirements would be issued under the Consumer Product Safety Act and are intended to reduce the risk of the injuries and deaths that occur from fires started by children under the age of 5 playing with cigarette lighters. The proposal also includes labeling, testing, recordkeeping, reporting, and stockpiling requirements for manufacturers and importers.

DATES: Written comments are due no later than November 2, 1992. An opportunity for the presentation of oral comments will be provided at 10 a.m. on October 21, 1992. Requests to make oral comments must be received by the Commission's Office of the Secretary no

later than September 30, 1992. In order to participate, speakers must submit a written copy of their statement, or a detailed and comprehensive summary specifying all significant issues to be raised, no later than October 7, 1992.

ADDRESSES: Written comments and data, preferably in five copies, should be captioned or conspicuously identified as "Comments CC 92–1." Requests to make oral comments and copies of oral statements or summaries thereof should be captioned or conspicuously identified as "Oral Presentation CC 92–1." All these materials should be mailed to Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to room 528, 5401 Westbard Avenue, Bethesda, MD 20816; telephone (301) 504–0800; telefax (301) 504–0127.

The oral presentation of comments will be held in room 556, 5401 Westbard Avenue, Bethesda, Maryland. The rules of 16 CFR Part 1052, "Procedural Regulations for Informal Oral Presentations in Proceedings Before the Consumer Product Safety Commission," shall apply. Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes, excluding time consumed by questions of the presenters and the presenters' answers to those questions.

FOR FURTHER INFORMATION CONTACT: Barbara Jacobson, Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477.

SUPPLEMENTARY INFORMATION:

I. Background

The Product: Lighters

There are two common types of fuel and three basic operating methods among the various models of lighters available to consumers. In the most widely used operating method, a flint and spark wheel ignite a jet of butane gas (or, rarely, a propane gas mixture) released by a thumb-operated valve-and-lever assembly; this "roll and press" method has been predominant among disposable pocket lighters since their general introduction in the early 1960's. In a past variation of this method, a push-button mechanism was used to roll the wheel and release the gas with a single motion; this variant is commonly known as a "ratchet" lighter.

A second, more recently introduced operating method uses a push-button-activated piezoelectric ignition module to ignite the (typically butane) gas without mechanical spark generation. A past variation of this method used a touch-sensitive light beam circuit for activation.

In these first two methods, the flame is extinguished when the lever or push button is released and the flow of gas is interrupted.

In a third operating method, a flint and spark wheel ignites liguid fuel (typically naphtha) drawn through a wick; these may be operated by rolling the spark wheel or, less commonly, by means of a mechanical push button. Liquid-fuel lighters may have a cap or other means of shutting off the fuel or oxygen supply.

Regulatory Background

In April 1985, Ms. Diane Denton, a nurse at Kosair Children's Hospital in Louisville, Kentucky, petitioned the Commission (Petition No. 85–2) to require that disposable butane lighters be child-resistant. Information available to the Commission at the time it received the petition indicated that residential fires started by children playing with cigarette lighters claimed an estimated 140 lives each year. Information available in 1985 indicated that children younger than five years old were the principal victims of fires set by child play, accounting for 125 of the 140 deaths, but the information did not establish whether children younger than five were also the principal operators of the lighters involved in the fires. Additionally, the types of cigarette lighters involved could not be identified. Information about the patterns of how children used lighters that could indicate how the products might be changed to make them child-resistant was also not available.

During 1986 and 1987, a field study was conducted by the Commission with the help of fire departments around the United States. Two hundred seventy-seven fires involving lighters and child play were investigated. Ninety-six percent of the lighters involved in the incidents were disposable butane models.

Most of the children who operated the lighters in the child-play incidents were less than five years old, primarily ages three and four. The most common method of operation by children was with two hands, using one hand to steady the lighter and the thumb or index finger of the other hand to roll the wheel and press the fuel lever.

On December 31, 1987, the Commission voted to grant the petition. At the same time, the Commission voted to publish an advance notice of proposed rulemaking ("ANPR") for child-resistant cigarette lighters and to expand the project to consider whether all lighters should be covered, rather than just disposable lighters. The ANPR was published in the **Federal Register** on March 3, 1988. 53 FR 6833. The ANPR stated that the Commission was considering a number of alternatives that would prevent or reduce the deaths and injuries caused by children playing with cigarette lighters. The ANPR also stated that the Commission would consider establishing performance requirements for cigarette lighters, either under sections 7 and 9 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2056, 2058, section 2(q)(1)(B) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261(q)(1)(B), or sections 3 and 5 of the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1472, 1474. The Commission also stated that it would consider requirements for labeling cigarette lighters to warn adults to keep these products out of the hands of children.

Finally, the Commission said it would consider the possibility that the voluntary standard for cigarette lighters, ASTM F400–85, could be revised to include performance requirements to make cigarette lighters resistant to operation by children or to require that lighters be marked with additional or revised warnings to keep these products out of the hands of children.

Development of the Performance Test Protocol.

In 1987, the Commission contracted with COMSIS Corporation to develop strategies for improving the child-resistance of cigarette lighters and to develop a test protocol for evaluating child-resistance. The test protocol recommended by COMSIS is based on the testing procedure for child-resistant packaging in the Poison Prevention Packaging Act Regulations. The protocol includes a test using panels of children to determine the child-resistance of cigarette lighters and a test using panels of adults to determine the ease of operation of the lighters by adults. A report, "Recommendations for Evaluation of Cigarette Lighter Child-Resistance," was provided by COMSIS in June 1988.

When testing whether children can operate a cigarette lighter, a lighter without fuel that does not produce a flame must be used to insure the safety of the children. A "surrogate" lighter that produces an audible or visible signal when operated in a manner that would produce a flame in an ordinary lighter was developed for use in the pilot test by the Commission's Engineering Sciences Laboratory. This surrogate lighter consists of a small radio transmitter, which is located inside the

lighter body, and a separate receiver that is capable of receiving the transmitted signal up to 30 feet from the lighter. When the signal is received, a buzzer sounds and a small light shines. ("Development of the Surrogate Lighter", R. Reichel and W. Stratton, May 1988.)

In September 1988, the Commission contracted with Perritt Laboratories, Inc., to conduct a pilot test of the draft protocol. The pilot test results indicated that the child and adult protocols recommended by COMSIS were suitable procedures for evaluating child-resistant lighters. ("Results of the Pilot Test of the Adult and Child Protocols for Testing Child-Resistant Cigarette Lighters". B.J. Jacobson, September 1, 1989.)

Subsequent to the pilot test, the staff stopped working on an adult test protocol. The Commission preliminarily concludes that a mandatory performance test is not needed to assure that adults are able to operate child-resistant lighters. Unlike many of the products regulated under the PPPA, where it is essential for adults to have access to their medications, no equivalent health-related need exists for lighters. In addition, for nonprescription products, the PPPA allows that a product can be packaged in one size of non-child-resistant packaging if the product also is supplied in child-resistant packaging. Prescription products subject to PPPA regulations may be dispensed in non-child-resistant packaging if so directed by the prescriber or the purchaser. Because non-child-resistant packaging is available for products regulated under the PPPA, it is important to insure that the child-resistant packaging is easy for adults to use in order to encourage adults to use the child-resistant version.

However, the proposed rule would be issued under the CPSA rather than the PPPA, and the PPPA provisions that require non-child-resistant alternatives do not apply. Furthermore, the effectiveness of a rule would be reduced if covered lighters were available in non-child-resistant versions. The Commission does not believe that a requirement for child-resistant cigarette lighters will result in a significant increase in the use of matches. The child-resistant designs known to the Commission are not difficult to use. The lighter's convenience of one-handed operation and 1000 to 1500 lights, compared to two-handed operation and 20–30 lights with a book of matches, insures that the large majority of consumers will continue to use cigarette lighters.

Accordingly, it is not necessary to mandate requirements to insure that the child-resistant lighter is easy for adults to use. The Commission believes that the lighter manufacturers themselves would adequately insure ease of use by adults so that their products will not be at a competitive disadvantage.

Baseline testing was conducted in 1989 and 1990 to determine the extent to which currently-marketed lighters can be operated by children and to support the establishment of an appropriate acceptance criterion for child-resistant lighters. The surrogate lighters used for the baseline testing were designed and provided by lighter manufacturers who serve on ASTM Task Group F15.02, Safety Standards for Lighters. Data were collected using two brands of roll-and-press lighters and two brands of push-button lighters. The proportion of children unable to operate currently available, non-child-resistant lighters was 55 percent for the roll and press lighters and 16 percent for the push-button lighters.

The results of the baseline testing were also analyzed to provide information about factors, such as the age or sex of the child, that contributed significantly to success in operating the lighter. A report on the results of the baseline testing was prepared by the Commission's staff in June 1990. ("Statistical Analysis of Baseline Cigarette Lighter Data," R. Newman and S. Kyle, June 19, 1990.)

The baseline results for the non-child-resistant disposable lighters, weighted to reflect product usage, suggest that the child-resistance of currently marketed lighters is approximately 50 percent. Using this figure, the potential benefits of improved child-resistance required by a standard can be predicted. For example, the proposed standard would increase the minimum allowable child-resistance of lighters to 85 percent. This constitutes at least a 70 percent improvement over the existing degree of child-resistance (the new 85 percent minimum minus the existing 50 percent equals 35 percent additional child-resistance, which when divided by the original 50 percent child-resistance gives a 70 percent improvement). See Section IX of this notice, below, which discusses the magnitude of the potential benefits of the proposed rule.

Because large numbers of child-resistant lighters have not been on the market (and for other reasons discussed below), the presently-available fire-incident data do not establish how closely the results of the child testing correlate to the prevention of fires in the home. The Commission preliminarily concludes, however, that the results of the tests of children provide a reasonable approximation of the ability of children to operate lighters in the home, which in turn should be directly reflected in the incidence of fires started by children with lighters.

The Commission reaches this conclusion for the following reasons. First, there has been no suggestion of another test that would both (1) more accurately reflect the likelihood that children will start house fires with lighters and (2) result in a lower estimate of benefits for a standard using that test.

Second, because large numbers of child-resistant lighters have not been on the market for a long period of time, fire-incident data cannot be analyzed to provide an empirical corroboration of the correlation between child-test results and child-play house fires. It is not feasible for the Commission to conduct a test to demonstrate this correlation. Such a test would require that the Commission (1) distribute a huge number of child-resistant lighters to a representative sample of lighter users, (2) somehow ensure that the users used the child-resistant lighters in the same way they would if all disposable and novelty lighters were required to be child-resistant, and (3) obtain information on the rate of fires started by children playing with the child-resistant lighters.

In addition, the accuracy of the estimate of benefits need not be great in order to support the rule. Even if the benefits of the proposed rule are only half what the child test results indicate, the benefits would have the prerequisite reasonable relationship to the costs. See Section IX of this notice, below.

Furthermore, the Commission's experience with a similar type of test for child-resistance under the Poison Prevention Packaging Act of 1970 has shown reductions in the ingestion rate of a magnitude sufficient to justify this proposed rule. For example, the PPPA regulation requiring child-resistant packaging for oral prescription drugs was issued in 1973, with an effective date in 1974. A Commission staff study shows that the fatalities per million children under age 5 have declined from over 4 in 1972 to about 2 in 1986. After taking into account the number of prescriptions written and the general decline in the rate of accidents to children, the study concludes that the fatality rate from 1974 to 1986 averaged about 1.6 deaths per million children less than would have been expected in the absence of PPPA requirements for oral prescription drugs. ("An Examination of the Effect of CPSC Prescription Drug Child-Resistant Packaging Requirements on Child

Fatalities," CPSC Directorate for Economic Analysis, M. Robins, November 1989.)

The number of deaths of children under age 5 due to all household chemicals has declined 81 percent since 1972. (1992 National Poison Prevention Week Editor's Fact Sheet, Q. No. 12.) The number of deaths of children under age 5 from ingestion of aspirin products has declined 93 percent over the same period. *Id.* Although not all of these declines may be due to child-resistant packaging, it seems likely that much of the decline is due to such packaging.

The child-resistance requirements being proposed for lighters in this notice may be even more effective than child-resistant packaging, because prescription products can be ordered in non-child-resistant packaging and manufacturers of nonprescription products subject to PPPA requirements can package one size of the product in non-child-resistant packaging pursuant to 15 U.S.C. 1473. In contrast, there are no exceptions from child resistance provided for the disposable and novelty lighters subject to the rule proposed in this notice. Furthermore, users often render child-resistant packaging ineffective by leaving the cap off or loose, in order to make it easier to obtain the substance in the package. In the case of cigarette lighters, however, the proposed rule requires the child-resistant feature to reset after every operation of the lighter. Therefore, the proposed child-resistance requirements for lighters may be even more effective than the similar requirements for child-resistant packaging for this reason also.

For the reasons discussed above, the Commission preliminarily concludes that the results of the child tests will provide a reasonable approximation of the extent to which a lighter will be used by children to start house fires and demonstrate that the benefits to be obtained by the proposed rule will have a reasonable relationship to the costs imposed by the rule.

Development of the Voluntary Standard

In January 1988, following the Commission's decision to grant petition PP 85–2, the Commission's staff wrote to ASTM's Task Group F15.02, Safety Standards for Lighters, requesting that they revise the current lighter standard to prohibit the design and marketing of lighters that are not child-resistant. (Letter to Mr. Edward Lewiecki from Nicholas V. Marchica, January 22, 1988.)

In June of 1988, the ASTM Task Group formed a Technical Subcommittee to develop a voluntary requirement for child-resistant lighters. The first action by the Technical Subcommittee was a review of the protocol proposed by COMSIS. The protocol was reviewed at a meeting in July 1988, and a summary of the discussion and suggested changes were provided to the Commission's staff. (Edward M. Lewiecki memorandum to members of F15.02 Technical Subcommittee, July 30, 1988.)

The Technical Subcommittee began drafting a voluntary standard in September 1989, using the Commission's protocol as a base. Throughout the development of the test protocol, the staff worked closely with she Technical Subcommittee. The ASTM Task Group included an adult test protocol as an appendix for advisory purposes. An adult test is not a requirement of the draft ASTM standard.

Lighter Association's Request That the Commission Issue the Draft Voluntary Standard as a Mandatory Requirement

In July 1990, the Lighter Association Inc. requested that the Commission adopt the draft ASTM voluntary standard for child-resistant cigarette lighters as a mandatory consumer product safety standard under section 9 of the Consumer Product Safety Act. [86] [1] The Association endorses a mandatory standard because this would assure that all lighter manufacturers and importers will comply and because a mandatory federal standard would preempt state-by-state regulations addressing this risk. The Association represents manufacturers, importers, and distributors of the majority of cigarette lighters sold in this country.

In March 1991, the members of ASTM Task Group F15.02 voted to suspend work on the voluntary standard and support the Commission's work on a mandatory standard. [124]

Verification Testing

(See CPSC staff report "Statistical Analysis of Non-Child-Resistant Roll and Press Cigarette Lighter Data," April 1992.) To verify that the test results from the protocol are reproducible when the tests are conducted by different laboratories, the CPSC's staff requested the cooperation of members of the ASTM Task Group F15.02 during their March 1990 meeting. One major lighter manufacturer and the Department of Consumer and Corporate Affairs of Canada offered to participate. The manufacturer completed a 50-child test and provided a report to the staff in July 1990. The results of those tests are consistent with the baseline testing conducted by the Commission. The initial testing in Canada was conducted in Montreal and Toronto; this testing was completed in December 1990. A preliminary analysis of the results of the Canadian testing indicated that the results of the tests in Montreal were consistent with the other results from the baseline testing and the tests by the manufacturer mentioned above. The tests from Toronto, however, showed that fewer of the children tested there were able to operate the surrogate lighters than would be expected from the previous test results and from the results of the Montreal tests.

A CPSC staff member went to observe some of the later testing in Toronto, and concluded that the testers there were not following the test protocol in the way that had been done for the baseline testing. In addition, the surrogate function of two lighters performed unreliably during this testing, and the lighters were returned to the manufacturer for repair. Because of these problems, the CPSC's staff concluded that the Toronto data should not be considered as part of the verification testing.

Because of the unexpected results from Toronto, the Canadian Government agreed to conduct additional tests there, using another contractor. Largely because of the need to determine that the test protocol for determining the child-resistance of cigarette lighters was repeatable and reproducible, the Commission voted in May 1991 to postpone a decision on whether to publish a proposed mandatory standard for child-resistant cigarette lighters until after receipt of the Toronto retest results. The staff received the final test data on March 2, 1992.

The results for this second round of testing in Toronto were consistent with the data from other test locations when two activations of the surrogate lighter are used as the criterion for whether a child has successfully operated the lighter ($p=.097$). (The symbol "p" represents the chi-square probability in a maximum likelihood analysis of variance. A factor, such as location, has a significant effect on the rate of success if p is 0.05 or less.) When one activation of the lighter is used as the criterion, the variation, while only slightly greater, became statistically significant ($p=.043$).

These borderline results around $p=.05$ for one and two lighter activations led the staff to investigate the effect of tester variability on the successful operation of lighters by children. The staff found that the results of the Toronto retest were affected by one tester (out of six) who was

[1] Numbers in brackets refer to the number of a document at the List of Relevant Documents at the end of this notice.

especially adept at obtaining the children's cooperation. That tester, who conducted 30 percent of the tests, had an excessive effect on the success rate. If that tester is weighted as having conducted one-sixth (17 percent) of the Toronto tests, the results in Toronto would have been consistent with the data from other sites for either definition of success ($p=0.34$ and $p=0.12$). As a result of the analysis of the verification testing data, changes have been made to the testing protocol so that the test results will be more consistent. The changes include requiring panels of 100 children instead of panels of 50 children and requiring the testers to test approximately equal numbers of children (20 ± 2 children each for 5 testers and 17 ± 2 children each for 6 testers).

The verification tests show that the age and sex of the child being tested are significant factors affecting the likelihood of success, but that whether the child comes from a home with a smoker that uses a cigarette lighter is not a significant factor affecting the results. Therefore, the previous requirement in the draft test protocol that a minimum number of children be from homes with smokers who use cigarette lighters has been deleted.

II. Comments On The ANPR

The Commission received submissions from 13 commenters in response to the ANPR that was published in March 1988. In addition, some late submissions were received that are being considered in the same manner as comments on the ANPR. The commenters raised the following major issues:

1. The need for a mandatory standard, 2. The relative risk of matches vs. lighters, 3. Alternative solutions to the problem, 4. The scope of the standard, and 5. Human factors issues.

The Commission's staff prepared detailed responses to the issues raised by the comments. The Commission's views on the major issues presented by the comments are explained below:

The Need for a Mandatory Standard

Some commenters supported Commission action toward a mandatory standard and recommended proceeding as expeditiously as possible. Other commenters believed that a mandatory standard was unnecessary and premature and that the Commission's data were not sufficient to show an unreasonable risk.

The Commission preliminarily concludes that an unreasonable risk does exist, as shown by the hazard data and the projected relation of costs and benefits of a standard, described in section IX of this notice. The proposed rule is expected to prevent about 85–120 deaths per year and to result in a total annual savings, including savings in deaths, injuries, and property damage, of $210–290 million. The annual costs to consumers of the proposed rule are estimated to be about $95 million. Thus, the expected benefits substantially outweigh the estimated costs to the public. Further, the commenters who suggested that an unreasonable risk might not exist have now requested that the Commission issue a mandatory standard.

The Relative Risk of Matches vs. Lighters

Some commenters stated variously that matches are a greater hazard than cigarette lighters, that a standard for lighters may cause a switch to matches, or that the Commission's ANPR should cover both matches and lighters.

In terms of frequency, estimated fire losses (fires, deaths, injuries, property loss) associated with children playing with matches are somewhat higher than losses associated with lighters. However, the available data on child-play fires indicate that the proportion of these losses attributable to fires started by children under 5 years old, the ones considered most amenable to prevention by a child-resistant design, are substantially lower for matches than for lighters. Among a group of about 100 match fires that were investigated by CPSC field staff in 1989, only 43 percent of the fires, 35 percent of the deaths, and 37 percent of the injuries were incurred in fires started by children under five years old, compared with the respective percentages of 73 percent, 93 percent, and 83 percent that were found among 277 cigarette lighter child-play fires that were investigated from 1985 through 1987.

If these percentages are applied to the average annual fire losses estimated for 1987 through 1988 and adjusted to include injuries that occurred in fires that were not attended by fire departments, then the average annual losses attributed to fire starters under the age of 5 are as follows:

TABLE 1.—ESTIMATED ANNUAL FIRE LOSSES, 1987–1988

	Lighter child play fires		Match child play fires	
	All	Started by children <5	All	Started by children <5
Fires	8,100	5,900 (73%)	13,400	5,800 (43%)
Deaths	180	170 (93%)	210	70 (35%)
Injuries *	1,650	1,150 (70%)	1,390	400 (29%)

* Includes victims treated in hospital emergency rooms for injuries suffered in child-play fires not attended by fire departments.
Source: U.S. Fire Administration, National Fire Protection Association, CPSC investigations, NEISS, CPSC staff.

Thus, the estimated frequency of death and injury specifically attributable to play by children under 5 years old is substantially higher for cigarette lighters than for matches, even though the estimated number of fires started by children under age 5 are about the same.

Estimates of relative risk require a combination of the frequency of injury and consumer exposure to the product. In the case of lighters and matches, exposure can be expressed in several ways:

1. The number of "lights" per year (estimated by one commenter);

2. The number of products used during a given time period;

3. The number of households in which such products are found;

4. The number of households that have both young children and lighters or matches; or

5. The number of products and locations in households with young children where such products are accessibly located.

The best measure of relative risk for these products involves the presence of lighters and matches in accessible locations in households with young

children. The estimated fire, death, and injury rates in residential structural fires started by children under age 5 with cigarette lighters or matches are shown in Table 2, along with the relative rates for these products. The death and injury rates for lighters, with respect to accessible locations, are more than three times the rates for matches. This suggests that a shift in consumer preferences for matches would probably not substantially reduce the benefits of a rule requiring lighters to be child-resistant.

TABLE 2.—FIRE, DEATH, AND INJURY RATES IN RESIDENTIAL STRUCTURAL FIRES STARTED BY CHILDREN UNDER AGE FIVE PLAYING WITH CIGARETTE LIGHTERS OR MATCHES

	Rate per 100,000 accessible product locations in homes with children under age 5		Relative rate lighters/ matches
	Lighters	Matches	
Fires	115.2	83.5	1.4
Deaths	3.3	1.0	3.3
Injuries	22.4	5.8	3.9

Source: U.S. Consumer Product Safety Commission—1990 Survey on Lighters and Matches.

The Commission believes that the risks associated with both lighter and match child-play are matters of concern. However, it is reasonable to address lighters and matches separately unless matches are more hazardous than lighters and substantial numbers of adults may switch to matches in the event of a child-resistant lighter standard. There is no convincing evidence that either of these conditions is likely.

Alternative Approaches to Risks From Cigarette Lighters

Some commenters stated that the solution to the problem of fires started by children playing with cigarette lighters lies in changing human behavior rather than in changing the product. Labeling and education to achieve proper adult supervision were suggested alternatives. Other commenters, however, believed that labeling is an inadequate remedy.

Most lighters or their packaging, including virtually all disposables, are already labeled "keep away from children," among several other cautionary messages. Efforts are underway by ASTM Subcommittee F15.02, Safety Standards for Lighters, to strengthen and emphasize this warning in the voluntary standard. The Commission's staff believes that although a well-designed label can be beneficial, it would not adequately reduce the risk of child-play fires. Although a required label would not add significantly to manufacturers' costs, the benefits may also be negligible. To the extent that labeling would be effective, the benefits should be achieved by lighters subject to the revisions to the ASTM standard governing lighter labeling, ASTM F–400, that are being developed.

Information campaigns to raise the consumer's level of awareness and change adult behavior may also be beneficial, but past studies suggest that the effect is likely to be gradual and will require continuing reinforcement.

The Commission concludes preliminarily that the most successful strategy lies in changing product performance to reduce the ability of children under age 5 to operate the lighter. However, it would be desirable to combine elements of labeling or education with performance requirements to maximize a reduction in hazard.

Scope of the Standard

Some commenters stated that the regulation should cover all lighters, including novelty lighters that are shaped like various other objects or that have lighters incorporated into other products, such as a watch. One commenter urged that novelty lighters be banned. The Commission's proposed rule includes all novelty lighters. See Section III of this notice.

Human Factors Issues

The following comments related to human factors issues:

1. Child-resistant lighters may give a false sense of security and make adults more lax;

2. A disproportionate number of children in fire-play incidents may be under emotional stress, in an unstable family environment, or suffering from a clinical disorder;

3. Lighters are not intended for children; and

4. Proper adult supervision would have averted the lighter incidents.

The Commission believes that although cigarette lighters are intended for adults, they attract children's natural curiosity. Thus, a number of children can be expected to try to obtain the lighter even though the adult takes some degree of care in not leaving the lighter where it can be readily noticed by a young child. Thus, laxness of an adult is not a prerequisite to a child's gaining possession of a lighter. The Commission concludes that it is impractical to rely solely on adult supervision to avert these accidents.

Investigations indicate that adults already frequently leave non-child-resistant lighters within children's reach. There are no data showing that using a child-resistant lighter would make adults significantly more lax than is the case already.

The information available to the Commission does not support the commenter's assertion that juvenile fire setters generally are troubled children. A study conducted in Rochester, NY, indicates that the majority of child-play fires responded to by the fire department did not involve troubled children, but rather were due to children's curiosity and lack of understanding of the dangers of playing with fire. Even if the commenter's contention were correct, however, it would not be expected to reduce the estimated effectiveness of the standard.

III. Scope of the Proposed Rule

The proposed rule covers "disposable" and "novelty" lighters, as those terms are defined in the rule. Broadly speaking, disposable lighters are those that are used for a relatively short period of time and then thrown away when empty. Lighters that cannot be refilled are obviously disposable. Some other factors that may affect disposability are cost, durability, repairability, rarity; and esthetic qualities.

A field study conducted by the Commission in 1986 and 1987 showed that 96 percent of the lighters involved in child-play fire incidents were nonrefillable butane models. Since then, however, a number of inexpensive refillable butane lighters have been introduced. These are typically the least expensive refillable models, and their very low price substantially reduces the likelihood that they would be refilled (much less repaired). Therefore, these lighters are essentially disposable and are widely referred to by industry as "refillable disposables." Since they would be treated as disposables—*i.e.*, more than one commonly is owned and the extras can be left in areas that may be accessible to young children—the Commission proposes to include these lighters within the scope of the rule.

The draft ASTM standard, and earlier CPSC staff efforts, specified various physical characteristics of the lighters that were intended to separate disposable lighters from nondisposable ones. In the earlier draft ASTM standard, disposable lighters were defined as those that have all of the following characteristics: (1) The fuel is butane, isobutane, propane, or other liquefied hydrocarbon, or a mixture containing any of them, whose vapor pressure at 75° F (24° C) exceeds a gage pressure of 15 psi (103 kPa), (2) a plastic pressure vessel containing a supply of fuel, and (3) a gross weight of the fueled lighter of less than 50 grams. The original definition recommended to the Commission by its staff was very similar to this draft ASTM definition.

By letters dated November 30 and December 7, 1990, the Lighter Association requested that the limitation in the definition of disposable that the gross weight of the fueled lighter be less than 50 grams be replaced by a minimum ratio of the weight of the fuel to the empty weight of the lighter. The Lighter Association suggested that disposable lighters should include lighters where this ratio exceeds 5.0.

The Commission's staff evaluated the "less than 50 grams" and "weight ratio" definitions for disposable lighter and found that they both had problems; either they included lighters that the staff did not consider to be disposable or they excluded lighters that the staff believed were disposable, or both. Therefore, the staff developed a definition based on the cost of the lighter, which appears to be the major factor in whether a lighter is treated as a disposable. Accordingly, the proposed definition of disposable lighter includes all lighters that are not refillable with fuel and all lighters having a Customs Valuation or ex-factory price of under $2. The proposal provides that this value would be adjusted every five years in accordance with changes in the monthly Wholesale Price Index. At the present time, lighters covered by the proposed price criterion would typically sell at retail for less than $6 each; some may sell for up to $8 or $9 apiece. It is possible that some lighters could be imported at just over $2 in Customs Valuation and sold at retail for $3 to $4; such lighters could compete with some higher-priced models subject to the proposed rule. There are currently no known imports of such lighters. The Commission believes it is unlikely that manufacturers or importers would increase prices of significant numbers of lighters simply to avoid compliance with the proposed rule.

Colibri Corp., a major importer of lighters, has told the Commission's staff that, assuming a reasonable level of convenience among child-resistant lighters, non-child-resistant substitutes would not compete successfully at the $3-$4 retail level and would probably not gain significantly in market share relative to complying disposables.

On the other hand, the importer of Cricket lighters wrote to the Commission's staff expressing concern that the profit margins on lighters above the proposed $2 level for disposable lighters could be small enough that non-child-resistant lighters could compete with the child-resistant disposable lighters covered by the proposed rule. Cricket recommends that the $2 figure be raised to $4. The Commission solicits comment on this issue, including (1) the size of profit margins for importers, distributors, and retailers that could be associated with lighters and (2) the retail prices at which consumers are likely to treat lighters as disposable.

The proposed rule does not cover most so-called "luxury" lighters, which are refillable and generally have metal cases and cost more than the proposed definition of disposable would include. This group includes those products known as "table lighters," which are typically not intended to be carried in a pocket or purse. As noted above, about 96 percent of the fire incidents caused by child play involved disposable butane lighters. The industry argues that luxury lighters are used somewhat differently than are disposable lighters, in that they are more likely to be carried by the owner and extra lighters are not as likely to be kept, as is frequently the case for disposable lighters, since the luxury lighter can be refilled when it runs out of fuel and costs too much to discard. In contrast, disposable lighters are inexpensive and are often sold in packages containing more than one lighter. Users are likely to have extra disposables so that a lighter will be available when the one that is being used runs out of fuel; this would tend to increase the number of disposable lighters left lying in places accessible to small children.

Also, as discussed in more detail below, different cost-benefit considerations associated with child-resistance would apply to luxury lighters than apply to disposable lighters. Because fewer luxury lighters than disposable lighters are made, the cost of making luxury lighters child-resistant is estimated to be considerably higher on a per-unit basis than the cost per disposable lighter. Including luxury lighters within the scope of the proposed rule would significantly increase the overall cost of the rule to consumers; concomitant benefits, however, would be unlikely to result.

For the reasons given above, the Commission decided not to propose to include luxury lighters within the scope of the rule.

The proposed rule also covers all "novelty" lighters, which are defined in the rule as lighters that resemble any other object in physical form or function, for example, a car, a gun, a spaceship, a watch, a pack of cigarettes, an ice cream cone, etc. A novelty lighter can operate on butane or liquid fuel and can be refillable or nonrefillable as to fuel and flint, although nonrefillable lighters already are subject to the rule under the definition of disposable.

This definition of novelty lighters was essentially the definition that was in the draft ASTM standard that the Lighter Association asked the Commission in July 1990 to mandate. In a letter dated October 26, 1990, however, the Lighter Association asked that the definition of novelty lighter be narrowed to include only a lighter that "imitates in physical form or function a product normally associated with children playing, *e.g.*, a car, an ice cream cone, a spaceship, a gun, etc."

The Commission, however, decided not to narrow the proposal in this manner. This suggested definition is somewhat indefinite, in that there could be some dispute about whether particular lighters resemble a product "normally associated with children playing," especially since children often will play with any object that is available. Also, the available data indicate that novelty lighters as a class may be more dangerous, on a per-lighter basis, than the luxury lighters that are not covered by the proposed rule.

Field investigations were conducted over the period 1985–1989 to identify the types of lighters involved in residential structural fires. [111] Novelty lighters and luxury lighters each accounted for an estimated 2 percent of residential structural fires started by children under 5 years of age. However, novelty lighters account for less than 1 percent, and luxury lighters for approximately 5 to 8 percent, of lighters in use in the United States. These data suggest that novelty lighters may have a higher risk of involvement in lighter child-play fire incidents than do luxury lighters.

In view of these factors, the Commission decided to propose that all novelty lighters should be subject to the child-resistance requirements of the standard.

Like the ANPR, the proposed rule does not cover matches. Although a significant number of fires are started by children playing with matches, a lesser percentage of match fires than lighter fires are started by children under age 5. Children under age 5 are more likely to be deterred by child-resistance than are older children.

Also, matches would require different technical solutions to the feasibility and effectiveness of child-resistant features and a different child-test protocol. Accordingly, the Commission decided not to include matches within the scope of the proposal. The Commission, however, does not mean to imply that it will not consider possible separate remedial action in the future to reduce the number of deaths and injuries caused by children playing with matches.

The proposed rule also does not cover any mechanical or electric lighting devices not primarily intended for use with smoking materials, for example, lighters intended for fireplaces or charcoal or gas grills. Lighters that do not produce a flame, such as those using an electrically-heated coil, which are commonly found in automobiles, are also excluded. The Commission lacks data showing that these products present the same types of risks as the lighters covered by the rule.

IV. Requirements for Lighters

A. General

The proposed rule provides that lighters shall be capable of resisting operation by at least 85 percent of children in a specified test. The test involves giving the children 5 minutes to attempt to successfully operate the lighter. If they do not successfully operate the lighter within that time, they are given three visual demonstrations of operation of the lighter, followed by another 5-minute period during which they are to attempt to operate the lighter.

If more than 15 percent of the children successfully operate the lighter, it fails the acceptance criterion. This percentage is applied to 200 children, but it may not be necessary to test that many. The proposed test provides that panels of 100 children shall be tested sequentially. As explained below, depending on the results with the first panel, it may be possible to demonstrate statistically with the results from one panel that 85 percent of the 200 children would be unable to operate the lighter. The children would have to be from the United States, except that children from another country could be used if tests of one child-resistant lighter design in the United States and in the other country gave results that are not significantly different at $p = .05$.

B. Acceptance Criterion

A letter dated July 20, 1990, from the Lighter Association stated that some of the manufacturers of disposable lighters in the Association have developed prototype child-resistant lighters that will meet an 80 percent acceptance criterion. The draft ASTM voluntary standard includes an acceptance criterion of 80 percent, as does the existing protocol for child-resistance of packaging under the PPPA.

The Commission's staff is testing four different models of child-resistant lighters. Three of the lighters are over 95 percent child-resistant. The preliminary child-resistance of the fourth lighter is 78 percent.

Because the available information indicates that some cigarette lighters can be made child-resistant at levels that exceed the 80 percent level previously under consideration, the Commission decided to raise the criterion. Even though some design prototypes have achieved over 95 percent child-resistance effectiveness in testing, the Commission is proposing an acceptance criterion of 85 percent for the following reasons.

First, the testing of non-child-resistant lighters in the verification testing, described above, indicates that there probably is more variability in test results of cigarette lighters than there is in tests of packaging under the PPPA. In order for a manufacturer to be able to conclude that its lighter design would pass future tests with an acceptance criterion of 85 percent, the manufacturer would have to conduct a test in which lighters representing production models of the design averaged at least 89 percent child resistance. Thus, to assure compliance at the 85 percent level, firms would have to market lighters that were at least 89 percent child resistant, on the average.

In addition, the Commission cannot conclude that other manufacturers will be able to use the designs for which the Commission has test data, due to a lack of information on the patent and licensing situation involving these designs. Other designs may not achieve the high results currently known to the Commission's staff. However, the Commission solicits' comment on the feasibility of requiring in the final rule that lighters meet an acceptance criterion of 90 percent.

C. Sequential Testing

The proposed testing of sequential test panels of 100 children is intended to provide a reliable means of determining compliance with the requirement for child-resistance, while reducing the cost and time associated with conducting the tests. Sequential testing has been used successfully with panels of 50 children under the PPPA. Due to the potentially higher variability associated with cigarette lighter testing, however, the Commission is proposing to use 100-child panels for testing cigarette lighters.

The pass/fail criteria were selected so that a lighter would be considered child-resistant if the probability of a child operating the lighter is 15 percent or less in a sample of 200 children. In the sequential testing program incorporated in the proposed rule, up to 2 panels of 100 children each may be used. Based on the results in the first test panel of 100 children, the decision is made to pass the lighter, to fail the lighter, or to continue testing with the additional panel.

The pass/fail criteria for the first test panel were designed so that, if the probability of operating the lighter is 10 percent or less, the lighter will be accepted as child resistant 95 percent of the time. If the probability of operating the lighter is greater than 20 percent, the cigarette lighter will be rejected 95 percent of the time. If the lighter is not accepted or rejected under these probabilities for the first panel, the second panel is tested. Accordingly, in the first test panel of 100 children, the lighter passes if 10 or fewer children operate it, the lighter fails if 19 or more children operate it, and testing continues if 11 to 18 children operate it.

Table 3 gives the pass, continue to test, and fail criteria for sequential testing.

TABLE 3.—SEQUENTIAL TESTING CRITERIA

Test panel	Cumulative number of children	Successful lighter operations		
		Pass	Continue	Fail
1	100	0–10	11–18	19 or more.
2	200	11–30	.....	31 or more

Thus, the child test protocol specifies the use of 100 children initially, and, depending on the results, it would be determined that the lighter is either child-resistant or not child-resistant or that further testing, with a total of 200 children, is needed.

The protocol also requires that particular numbers of children shall be in each of 3 age groups of children on each panel, 42–44, 45–48, and 49–51 months old, with 30, 40, and 30 percent of the children in each age group, respectively. Each age group consists of approximately two-thirds boys and one-third girls. Although it was originally considered that about one-half of each age and sex subgroup of children shall be from homes where there is at least one smoker who uses a lighter, the verification testing showed that there is no difference in the success rate for children from smoking and nonsmoking households. Accordingly, the Commission is not proposing this requirement.

D. Surrogate Lighter

Because using an operable lighter in these tests could expose children to a risk of injury from fire, the child tests use "surrogate lighters," which are lighters that are without fuel and that produce an audible signal or visible signal when operated in each manner that would create a flame in the lighters that they represent. (The Commission recommends that if a visual signal is used, it be located away from the lighter. If the visible signal is not away from the lighter, the visible signal could not be demonstrated to the children, as required at the beginning of the test, without also demonstrating the lighter's operation. Although a visible signal that is not remote from the lighter is permissible, it could increase the number of children who can operate the lighter, because the children in effect will get an additional demonstration of the lighter's operation at the beginning of the first 5-minute test period.)

Surrogate lighters must approximate the appearance, size, shape, and weight of the lighter intended for use and must be identical in all other factors that affect child-resistance (including operation and the forces (s) required to operate the lighter) as the lighter intended for use.

E. Number of Demonstrations

The proposed protocol provides that the child test shall be briefly suspended after 5 minutes if either of the pair of children being tested has not successfully operated the lighter. Any child that has not operated the lighter by that time is then given a visual demonstration of three operations of the lighter, and the test is resumed for another 5 minutes. Concern has been raised about whether a single demonstration would adequately simulate the conditions in the homes of smokers, where a child may see the lighter operated many times. The staff's test data on child-resistant lighters show that one demonstration is not adequate. Of the children given one demonstration, only one percent was able to operate the surrogate signal, even once. Of the children given three demonstrations, five percent were able to operate the lighter once and three percent were able to operate the lighter twice. In order to insure that the children are provided an adequate opportunity to observe lighter operation during the test, the Commission is proposing to include three visual demonstrations of the operation of the surrogate lighter midway through the 10-minute test.

F. Successful Operation

A successful operation in the test is defined as one operation of the surrogate signal, of any time duration, during the 10-minute test. During the development of the test, the industry expressed concern that one brief signal might be produced "accidentally," without the child knowing how the signal had been achieved and with the child being unable to repeat it; the industry argued that such an instantaneous operation would not present a hazard. The industry therefore sought a requirement that a successful operation should be an operation of the signal that continued for two seconds.

The staff determined that it is too difficult for children to maintain the signal for two seconds in the limited time provided by the test. The staff considered specifying that two activations of the signal would be required for a successful operation for the purposes of the test in order to address the industry's concern about accidental instantaneous activation. However, results for the verification tests and the child-resistant lighter tests show that, for the large majority of children, one brief operation of the surrogate signal indicates potential for a second operation. Although a brief signal may not represent the ability to maintain a flame, it is a strong predictor of future success. Therefore, the Commission is proposing the "one operation of any duration" definition of successful operation.

G. Standardized Test Instructions

Although the Commission is not able to quantify the effect of using differently worded instructions for the child test, it is generally agreed that standardized tester instructions are helpful in preventing bias. Because of the variability in the success rates related to different testers in the verification test data, the proposed test procedures include considerable detail on how to interact with the children.

V. Statutory Authority

In the ANPR of March 3, 1988, the Commission cited provisions of the CPSA, the FHSA, and the PPPA as authority for this rulemaking proceeding. Summarized briefly, the following provisions of these three acts are relevant to this proceeding:

A. The CPSA

A cigarette lighter is a "consumer product" as that term is defined by section 3(a)(1) of the CPSA (15 U.S.C. 2052(a)(1)) because it is an article that is produced or distributed for sale to consumers for use in or around a household, in recreation, and in similar places and activities. Sections 7 and 9 of the CPSA (15 U.S.C. 2056, 2058) authorize the Commission to issue a consumer product safety standard consisting of labeling or performance requirements for a consumer product if those requirements are "reasonably necessary to prevent or reduce an

unreasonable risk of injury" associated with a consumer product.

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires each manufacturer of a consumer product that is subject to a consumer product safety standard to issue a certificate of compliance stating that the product conforms to all applicable consumer product safety standards. Section 14(c) of the CPSA requires that the certificate of compliance must be based upon a test of each product or a "reasonable testing program." Section 14(b) of the CPSA authorizes the Commission to issue rules to prescribe a reasonable testing program. Section 14(c) of the CPSA authorizes the Commission to issue rules requiring labels containing the date and place of manufacture and a suitable identification of the manufacturer, unless the product bears a private label, in which case the label shall identify the private labeler and contain a code mark that will permit the seller of the product to identify the manufacturer upon the request of the purchaser. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules requiring manufacturers to maintain records of the testing specified in any rule prescribing a reasonable testing program.

Section 9(g)(2) of the CPSA (15 U.S.C. 2058(g)(2)) authorizes the Commission to issue rules prohibiting the stockpiling of products that are subject to a consumer product safety rule. Stockpiling means the manufacturing or importing of a product between the date of promulgation of the consumer product safety rule and its effective date at a rate that is established by the rule and is significantly greater than the rate at which such product was produced or imported during a base period ending before the promulgation of the consumer product safety rule. The proposed rule includes a stockpiling provision in subpart C.

B. The FHSA

Butane or petroleum distillate fuel contained within a cigarette lighter meets the definition of the term "hazardous substance" in section 2(f)(1)(A) of the FHSA (15 U.S.C. 1261(f)(1)(A)) because it is "flammable" and in some cases is "toxic" or "generates pressure," and may cause substantial personal injury or illness as a proximate result of any customary or reasonably foreseeable use. Lighters which contain fuel when sold to consumers are subject to the labeling provisions of section 2(p) of the FHSA (15 U.S.C. 1261(p)) because they contain a hazardous substance which is intended or packaged in a form suitable for use in the household. Section 3(b) of the FHSA, 15 U.S.C. 1262(b), authorizes the Commission to issue rules to prescribe special labeling requirements for hazardous substances intended for use in the household if the Commission determines that the labeling specified by section 2(p) of the FHSA is not adequate to protect the public health and safety in view of the special hazard presented by that substance. Section 2(q)(1)(B) of the FHSA (15 U.S.C. 1261(q)(1)(B)) authorizes the Commission to issue a rule banning a hazardous substance intended for use in the household if the Commission determines that, notwithstanding any labeling which is or could be required by the FHSA, the degree or nature of the hazard is so great that the protection of the public health and safety can be adequately served only by keeping the product out of channels of interstate commerce. A banning rule issued under section 2(q)(1)(B) of the FHSA could take the form of a conditional ban: That is, a rule which bans any lighter which does not meet certain performance or design requirements specified in the rule.

C. The PPPA

Sections 2, 3, and 5 of the PPPA (15 U.S.C. 1471, 1472, and 1474) authorize the Commission to issue a rule to require packaging that is "significantly difficult" for children younger than five years of age to open or "obtain a toxic or harmful amount" of any substance contained therein which is a "hazardous substance" as that term is defined in the FHSA. To issue such a rule, the Commission must make and support findings that child-resistant packaging is required to protect children from serious personal injury or illness from "handling, using, or ingesting" the substance. As noted above, the fuel contained within a cigarette lighter is a "hazardous substance" as that term is defined in the FHSA. A cigarette lighter meets the definition of the term "package" in section 2(3) of the PPPA (15 U.S.C. 1471(3)) because it is the "immediate container" in which a hazardous substance is contained for use by individuals in a household.

Section 4(a) of the PPPA (15 U.S.C. 1473(a)) provides that for the purpose of making any substance which is subject to requirements for child-resistant packaging available to elderly or handicapped persons, the manufacturer may package that substance in conventional packaging in one size, provided that the substance is also supplied in child-resistant packaging, and the conventional packaging is labeled with the statement "This package for households without young children."

Proposal Under Section 30(d) of the CPSA

Section 30(d) of the CPSA (15 U.S.C. 2079(d)) provides that a risk of injury associated with a consumer product which could be eliminated or reduced to a sufficient extent by action under the FHSA or the PPPA may be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to regulate such a risk of injury under the CPSA.

Elsewhere in this issue of the **Federal Register**, the Commission has published a proposed rule under the provisions of section 30(d) to express the Commission's preliminary finding that if regulatory action is needed to address the risk of injury associated with cigarette lighters that can be operated by children, it would be in the public interest to regulate such risks under the CPSA rather than the FHSA or the PPPA. That proposal states that provisions of the FHSA and the PPPA authorize the Commission to address risks of injury associated with the fuel contained within a lighter because the fuel is a "hazardous substance." However, in the proposed 30(d) rule, the Commission observes that a lighter is more than a container or package of fuel. It is a device that incorporates a mechanism for igniting the fuel and is intended to be operated to produce a flame. In the proposed 30(d) rule, the Commission expresses its preliminary determination that the provisions of the CPSA are the most appropriate to address risks of injury associated with a mechanical device that is intended to produce flame and that can be operated by children who are unable to appreciate all of the consequences of their use of the product. Those consequences may include ignition of clothing and other articles, which may injure or kill the child operating the lighter or other persons.

The notice of proposed rulemaking for the 30(d) rule solicits written comments from all interested persons on the proposal through September 16, 1992. The maximum comment period allowed by section 30(d) of the CPSA is 30 days, whereas the comment period for this proposed standard is 75 days. However, comments on the 30(d) rule that are submitted within the 75-day comment period for the proposed standard will be considered.

If the Commission issues a final rule under section 30(d) of the CPSA and decides to prescribe mandatory requirements for lighters concerning the

extent to which the lighters can be operated by children, or to take any other regulatory action with regard to those lighters, the Commission will use the applicable procedures of the CPSA rather than those of the FHSA or the PPPA. If the Commission does not issue a final rule under provisions of section 30(d) of the CPSA, any requirements applicable to lighters which can be operated by children, or any other regulatory action with regard to those products, will be taken under the authority of the FHSA or the PPPA.

VI. Certification, Testing, and Recordkeeping Requirements

Section 14 of the CPSA, 15 U.S.C. 2063, provides that every manufacturer (including importers) or private labeler of a consumer product that is subject to a consumer product safety standard under the CPSA and is distributed in commerce shall issue a certificate that certifies that such product conforms to all applicable standards. The statute specifies that such certificates shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. In addition, any certificate must be based on a reasonable testing program or a test of each product, state the name of the certifying firm, and include the date and place of manufacture. The Commission may, by rule, prescribe the reasonable testing programs to be used for a product subject to a consumer product safety standard under the CPSA.

The proposed cigarette lighter standard requires that cigarette lighters resist operation by children. As explained above, the standard requires that surrogates of such lighters be tested by children in order to determine that the surrogates meet the child-resistance requirement. 16 CFR 1210.5. For these tests to be meaningful, the surrogates must be identical in all characteristics that affect child-resistance to the lighters that are produced for sale. It is, therefore, particularly important that manufacturers test surrogates, establish specifications, and maintain quality assurance programs to insure that production lighters are identical in all crucial respects to the surrogates, within reasonable manufacturing tolerances.

The proposed certification requirements include general requirements for certification, testing, recordkeeping, and reporting that are designed to insure that manufacturers or importers (1) conduct tests with surrogate lighters, (2) develop reasonable specifications and manufacturing tolerances to insure that production lighters are sufficiently identical to the surrogates, and (3) maintain those specifications and tolerances during production of their lighters. The Commission believes that these requirements reflect good engineering and manufacturing practice. Because the proposed rule requires the manufacturer or importer of a cigarette lighter to issue the certificate of compliance, private labelers are exempted, pursuant to section 14(b) of the CPSA, from the requirement to issue a certificate. Private labelers must, however, insure that any certificate that is provided with the product by the manufacturer or importer is provided to any distributor or retailer that receives the product from the private labeler.

The proposed certification requirements will not only insure that distributors and retailers will be aware that cigarette lighters comply with the standard but will also provide a mechanism for efficient monitoring and prompt enforcement of the requirements by the Commission.

Section 14(c) of the CPSA authorizes the Commission to issue rules requiring that products be labeled with the date and place of manufacture and with a suitable identification of the manufacturer of the consumer product, unless the product bears a private label. If the product bears a private label, the label shall identify the private labeler and contain a code mark that will permit the seller of the product to identify the manufacturer to the purchaser, upon the purchaser's request. Under this authority, the proposal requires that the label contain the name of the manufacturer, or the name of the private labeler with a code mark so the private labeler can identify the manufacturer at the request of the purchaser. In addition, the proposal requires the product to be labeled with an identification of the time period during which the product was manufactured. This time period would not exceed 30 days in length.

In addition to the authority in section 14 of the CPSA, the Commission has used the authority of sections 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2065(b), 2066(g), and 2076(e). Section 16(b) gives the Commission the authority to require manufacturers, importers, and private labelers to establish and maintain such records, make such reports, and provide such information as may be necessary to determine compliance with rules prescribed under the CPSA. Section 17(g) allows the Commission to condition the importation of a product on the manufacturer's (including importer's) compliance with recordkeeping requirements and with the Commission's reporting rules relating to such requirements. Section 27(e) authorizes the Commission to require manufacturers to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of the CPSA. For the provisions proposed under the authority of section 27(e), the Commission preliminarily finds that the provision of these performance and technical data related to performance and safety is required to protect the public against unreasonable risks of injury.

The proposed recordkeeping and reporting requirements will allow the Commission's staff to ensure that lighters comply with the standard and will provide the Commission with important performance and technical data about product designs on the market.

Summary of Certification Provisions, and Discussion; Section 1210.12—Certificate of Compliance

This provision restates the requirement in section 14(a) of the CPSA that a certificate of compliance must accompany the product or be furnished to any distributor or retailer to whom the product is delivered, establishes labeling requirements, and refers to the reporting and recordkeeping requirements described below. This section also summarizes the duties of parties subject to the regulation.

A certificate of compliance is required to accompany each shipping unit (for example, a case) of the product. This certificate is required to contain a statement that the product complies with the safety standard, the name and address of the manufacturer, importer, or private labeler, the date(s) of manufacture, and, if it is not on the lighter, the address of the place of manufacture. Each lighter is required to bear a label, which may be in code, identifying the manufacturer or private labeler and identifying the time period, not to exceed 30 days, during which the lighter was manufactured.

Wilkinson Sword wrote to the Commission opposing the requirement that the certificate of compliance include the date(s) of manufacture. They contend that this requirement duplicates the requirement for a date range marking on the lighter and that a given shipment could include a wide variety of production dates.

The Commission, however, does not agree that date codes on individual lighters are an adequate substitute for a certificate that provides that information. Customers, U. S. Customs,

and the Commission's enforcement staff should not have to open a large number of boxes in a shipment in order to obtain this basic information. In addition, section 14(a)(1) of the CPSA, 15 U.S.C. 2063 (a)(1), specifically requires that the certificate of compliance "shall include the date and place of manufacture." Comment is requested, however, on the burden involved in providing this information on the certificate of compliance.

Section 1210.13, .14 & .16—Certification Testing

These provisions establish minimum requirements for the reasonable testing program and require that manufacturers and importers perform qualification testing using surrogate lighters, followed by reasonable production testing. Corrective action or further testing must be undertaken when production testing indicates that lighters in a production interval may not comply with the standard. The Commission believes that this test scheme is consistent with normal manufacturing processes. The qualification testing and production testing required by this paragraph may be performed before the effective date of the standard.

Wilkinson Sword also wrote to the Commission arguing against the previous draft requirement which stated that production and distribution shall cease if testing indicates that lighters may not meet the requirements. The firm believes that the draft was ambiguous and that the rule should require cessation of production and distribution only for lighters that are part of the production interval where there are failing test results. While this is consistent with the originally intended meaning of the provision, more explicit language has been added.

Section 1210.15—Specifications

This provision requires that manufacturers, private labelers, and importers establish specifications for their cigarette lighters to ensure that the production lighters will be as child-resistant as the surrogates used in the child-based qualification tests. This will enable the Commission to compare actual production lighters to the firm's specifications to ascertain that the production lighters are identical, within reasonable manufacturing tolerances, to the surrogate lighters in all aspects that affect child-resistance. The Commission has found that these provisions are necessary to insure compliance with the standard, and proposes them under the authority of sections 14(b) and 16(b) of the CPSA.

Section 1210.17(a)—Recordkeeping Requirements

This provision, authorized by sections 16(b) and 27(e) of the CPSA, requires that the manufacturer or importer maintain records in English of its testing and specifications and provide the Commission's staff with access to these records. This will allow the Commission to determine whether the lighters being manufactured are sufficiently identical to the surrogate lighters and whether adequate controls have been placed on the manufacturing process.

Most of the required records and the surrogate lighters that were tested must be kept in the United States and be accessible to the Commission's staff within 48 hours of a request. This is so these records may be reviewed quickly to determine whether lighters comply with the standard, particularly where the lighters are being held by U. S. Customs. However, it may be convenient to maintain records of production testing at the production facility. Because many of the cigarette lighters subject to the proposed standard are manufactured outside the United States, this provision allows these records to be kept outside the United States, so long as they can be provided to the Commission's staff within seven days of a request. The Commission may perform tests with the surrogate lighters in order to determine the accuracy of the records and the child-resistance of the lighters.

Wilkinson Sword also contended that one week does not provide sufficient time for manufacturers to copy and produce records that are kept outside the United States. They suggest that three weeks would be needed.

The Commission considers three weeks to be too long. The Commission's agreement with the U. S. Customs Service specifies that the Commission's staff will make a decision within two weeks about whether an imported product violates Commission requirements. If the decision is not made within that time, Customs will conditionally release the goods. Three weeks is also too long if lighters—which have a relatively short shelf life—are in domestic commerce when the staff discovers a potential noncompliance.

Therefore, the Commission is proposing one week as the time required for production of records that are kept outside the United States. Comment is requested on the problems involved in meeting this requirement.

The records and surrogate lighters are required to be kept for three years after the events to which they relate have ceased. Thus, records of qualification tests and surrogate specifications, and surrogate lighters, must be kept for three years after the production of that model has ceased, and records of production testing must be kept for three years after the date of testing.

Except for production records, records must be kept on paper, microfiche, or similar media that can be directly examined. Production records may be kept on these media or on computer tape or other retrievable media.

Section 1210.17(b)—Reporting

This section requires that the manufacturer or importer submit basic information about its product, and a prototype or production unit of the lighter model, at least one month prior to the initial importation or distribution in commerce of each model. This will make it easier to identify products that either do not comply with the standard or have not been properly certified. This will particularly assist the Commission and the U.S. Customs Service in recognizing noncomplying imports.

Section 1210.17(c)—Confidentiality

The Commission recognizes that some of the recordkeeping and reporting requirements may require firms to provide information to the Commission that the firms view as trade secret or as other confidential commercial information. Under section 6(a)(2) of the CPSA, information in the possession of the Commission that contains or relates to a trade secret or other matter referred to in 18 U.S.C. 1905 or subject to 5 U.S.C. 552(b)(4) shall be considered confidential and shall not be disclosed. 15 U.S.C. 2055(a)(2). Under this section, and in accordance with 16 CFR 1015.18–1015.19, persons submitting information for which they desire confidential treatment must request that the information be considered exempt from disclosure. If the Commission's staff nevertheless determines that the information may be disclosed because it is not confidential information, the person submitting the information will be given notice in writing of the staff's intention at least 10 working days before the information is released. This provision gives the submitter an opportunity to seek judicial review of the Commission's determination prior to release of the information. 16 CFR 1015.19; see also, 16 CFR part 1101.

Section 1210.18—Refusal of Importation

Pursuant to section 17(g) of the CPSA, 15 U.S.C. 2066(g), this section conditions the importation of lighters on the manufacturer's compliance with the inspection and recordkeeping

requirements of this Act and the Commission's rules. Thus, importation of lighters may be denied if the importer has not complied with the reporting and recordkeeping requirements of the proposed rule, particularly if the lighters do not comply with the specifications for the surrogate.

VII. Anti-Stockpiling Provision

Subpart C of the proposed rule contains anti-stockpiling provisions of the standard that would limit the production or importation of noncomplying lighters between the promulgation of the rule and its effective date to 120 percent of each firm's rate during a base period; this base period could be any 365-consecutive-day period of a firm's choosing during the 5 years prior to the publication date of the final rule. Noncomplying lighters manufactured in, or imported into, the United States before the promulgation date of the standard could be sold to consumers at any time without being affected by the stockpiling rule.

VIII. Effective Date

The Commission proposes that the rule become effective 12 months after the date of publication of a final rule in the **Federal Register**. Lighters subject to the standard and manufactured or imported after the effective date would be required to comply. The 12-month period was selected in order to get child-resistant lighters into consumers' hands as quickly as reasonably possible, while allowing sufficient time for manufacturers and importers of most lighters to design, produce and import safer products. The 12-month period would also minimize any potential disruption that may occur among small importers of lighters subject to the standard. The potential effects on safety and industry of this and shorter effective dates are discussed below in Section IX of this notice.

IX. Initial Regulatory Analysis and Proposed Statutory Findings

The proposed rule is published under the authority of the Consumer Product Safety Act (CPSA). Section 9(c) of the CPSA, 15 U.S.C. 2058(c), requires that the Commission publish a preliminary regulatory analysis containing:

1. A preliminary description of the potential benefits and potential costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

2. A discussion of the reasons any standard or portion of a standard submitted to the Commission was not published by the Commission as the proposed rule or part of the proposed rule;

3. A discussion of the reasons for the Commission's preliminary determination that efforts proposed and assisted by the Commission would not, within a reasonable period of time, be likely to result in the development of a voluntary consumer product safety standard that would eliminate or adequately reduce the risk of injury addressed by the proposed rule; and

4. A description of any reasonable alternatives to the proposed rule, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed rule.

In addition, section 9(f)(1) of the CPSA, 15 U.S.C. 2058(f)(1), requires the Commission, when issuing a final rule, to consider and make appropriate findings for inclusion in the rule regarding:

1. The degree and nature of the risk of injury the rule is designed to eliminate or reduce;

2. The approximate number of consumer products, or types or classes thereof, subject to such rule;

3. The need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and

4. Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety. Because these findings are required to be in the final rule, they are included in § 1210.5 of the rule proposed below.

The following additional specific findings are required to be included in a final consumer product safety standard by section 9(f)(3) of the CPSA, 15 U.S.C. 2058(f)(3):

1. That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product;

2. That the promulgation of the rule is in the public interest;

3. If the rule relates to a risk of injury with respect to which persons who would be subject to such rule have adopted and implemented a voluntary safety standard, that either (a) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury or (b) it is unlikely that there will be substantial compliance with such voluntary safety standard;

4. That the benefits of the rule bear a reasonable relationship to its costs; and

5. That the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

The following discussion addresses the subjects about which the Commission is required by section 9 (c) and (f) of the CPSA to make appropriate findings. The findings that are required by the CPSA to be in the final rule are proposed at § 1210.5.

Product and Market Information

Consumers purchased more than 600 million lighters in the United States in 1991. About 95 percent of these were nonrefillable disposable pocket cigarette lighters. All nonrefillable lighters use butane fuel. These lighters are widely available through a variety of mass-merchandise retailers and are inexpensive (from under 50 cents to about $3.00 each).

About five percent of the lighters purchased by consumers in 1991 were refillable. Refillable lighters use butane or liquid fuel. About two percent of all lighters sold were inexpensive ($1.49–$4.00) pocket refillables. About three percent were luxury lighters, which are often distributed through higher-end retailers such as jewelers. Luxury lighters generally retail for above $10 and include pocket and table lighters. Less than one percent of all lighters sold were novelty lighters, which retail for about $5 and up.

There are about 50 lighter importers in the U.S. One firm manufactures disposable lighters in the United States, and another firm manufactures luxury lighters in the United States. In 1989, three firms marketed more than 95 percent of all disposable lighters (90 percent of all lighters) sold in the United States. By the end of 1991, these three firms marketed about 70 percent of all disposable lighters. The decline in their market share is the result of a steady market penetration of recently introduced, very low-priced ($0.35–$0.75 retail), disposable roll-and-press lighters. The estimated 1991 sales are shown in Table 4.

TABLE 4.—LIGHTER SALES—1991 ESTIMATES [1]

Type	Units (millions)	Percent of sales
Disposable:		
Nonrefillable (roll & press)	530	87
Nonrefillable (pushbutton)	50	8

TABLE 4.—LIGHTER SALES—1991 ESTIMATES [1]—Continued

Type	Units (millions)	Percent of sales
Inexpensive refillable [2]	10	2
Subtotal	590	97
Novelty	1	<1
Luxury refillables:		
Pocket butane [2]	9	2
Pocket liquid [2]	7	1
Table	2	<1
Subtotal	18	3
Total	607	[3] 100

Notes: [1] Figures represent point estimates within ranges.
[2] Categories each include some pipe lighters, all of which total less than 1 million units and 0.2 percent.
[3] Proportions are rounded within each category
Source: Lighter Association and individual company data and CPSC/Economic Analysis estimates.

The popularity of the various lighter types is reflected in the composition of the stock of lighters in consumers' hands. Over one-half billion lighters are estimated to be "consumed" annually in the United States. The vast majority of lighters in use consists of butane-fueled nonrefillables. A CPSC-sponsored national household survey (L. Smith, C. Smith, & D. Ray, "Lighters and Matches: An Assessment of Risks Associated With Household Ownership and Use," CPSC, June 1991) revealed that in 1990:

- 29 million households owned one or more working lighters; average ownership was about 3.5 lighters per household;
- A total of 104 million lighters were in consumers' hands, over 88 percent of which were disposable (72 percent roll and press, and 16 percent pushbutton); all types of pocket refillables accounted for about 10 percent of all owned lighters;
- Although many more households (a total of 60 million) owned matches, and matches in homes outnumbered lighters 10 to 1, lighters were used more than 600 million times per day, compared to about 200 million times per day for matches; and
- Lighting smoking materials accounted for 90 percent of lighter use, and about 60 percent of match use.
- Based on the survey data and on historical sales figures, it is estimated that roughly 3 to 5 percent of all lighters in use are inexpensive "refillable disposables," and that about 5 to 8 percent are "luxury" pocket refillables. Novelty lighters and table lighters probably account for less than 1 percent each.

There are about 50 manufacturers and importers of lighters in the U.S. In 1989, three firms marketing traditional major brands—BIC, Wilkinson Sword (Cricket/Feudor), and Scripto/Tokai—accounted for over 90 percent of all units, including over 95 percent of all disposables, shipped in the U.S. By the end of 1991, however, these proportions had changed significantly: The traditional "big three" accounted for about 70 percent of unit shipments. Since the late 1980's, there has been a steady market penetration of very low-priced ($0.35–$0.75 retail) disposable butane roll-and-press lighters, principally from Korea, China, Thailand, and the Philippines. Low labor costs in these nations and competition among local component part suppliers reportedly allow per-unit production costs of 10 cents or less for standard-size models. The market share of one importer, Westco, reportedly rivals those of the big three. The estimated market share of low-priced disposables was over 30 percent in 1991. Two firms, Ronson and Zippo, are dominant in the pocket refillables market, though their overall market shares are very low.

All of the major firms are importers. BIC also manufactures disposable butane lighters in the U.S. Zippo is the only known supplier of domestically-manufactured refillable lighters; there are roughly 10 other firms that import only "luxury" refillables. Though production estimates from industry sources vary, most lighters sold in the U.S. are imported. Each of the major firms manufactures or imports other products in addition to lighters; however, lighters constitute a significant portion of their total revenues.

Potential Benefits of the Proposed Rule

The proposed rule is intended to reduce the risk of fire associated with young children playing with lighters. The potential benefits to the public consist of the projected decrease in the cost of child-play lighter fires in terms of deaths, injuries, and property damage. It is expected that the effectiveness of the proposed rule would be limited primarily to preventing fires started by young children, especially those under the age of 5. Most child-play lighter fire casualties result from fires started by children under 5 (a yearly average of 170 deaths out of a total of 180). Match-related child-play fires, by contrast, are more often started by older children.

Based on the latest available multi-year fire loss data, the estimated annual cost of fires started by children under 5 playing with lighters is about $415 million. The proposed rule would substantially reduce this cost. To the extent that the proposed rule would avert some fires started by older children, potential benefits would be greater; this slight potential effect is not included in the estimates of likely benefits.

Two factors may reduce the potential benefits of the proposed rule. First, not all lighters in consumers' hands after the issuance of a rule could be expected to be child-resistant: Not all lighters would have to comply, and some previously-manufactured or previously-imported units—especially refillable models—may remain in use for many years. Second, some consumers may find child-resistant lighters inconvenient to operate and may choose to use matches instead (this effect is lessened to the extent that relatively less risky non-child-resistant refillables, rather than matches, are substituted for child-resistant models). The extent of these effects is uncertain. To be conservative with respect to potential benefits and roughly consistent with the ownership data from the consumer survey conducted by the Commission, the proportion of non-child-resistant lighters in use after the effective date of a rule is assumed to be greater than zero but not more than 20 percent. Some consumers would probably switch to matches, but the number who would do so would not be likely to exceed 10 percent (even this level would presume a substantial shift, given the estimated 750 billion lights consumed annually in the U.S.). The ranges of expected benefits noted below reflect the extremes of these two factors. An estimate using 10 percent non-child-resistant lighters in use and 5 percent switching to matches provides perhaps the best approximation of overall benefits; under these conditions (and assuming conservatively that the risk from matches is the same as the risk from non-child-resistant lighters), total benefits would be 85.5 percent (*i.e.*, .90×.95) as great as if there were no such effects.

At the 85 percent level of child-resistance that would be required by the proposed rule (and assuming full compliance), it is estimated that between 85 and 120 deaths per year may be prevented, and that the range of total annual savings, including reductions in deaths, injuries, and property damage, may be approximately $210–290 million. This estimate includes a range of annual injury cost and property damage savings of about $35–50 million. Under the best estimate, using the assumptions above, about 100 deaths would be avoided and total annual savings would be approximately $250 million.

In order to minimize the possibility that the Commission's staff would test a manufacturer's lighter and obtain results less than the 85 percent level required in the proposed rule, manufacturers would

attempt to produce lighters that perform better in child panel tests than 85 percent; this would allow firms to maintain achievable levels of quality control in component specification tolerances and in manufacturing practices. The actual effectiveness of child-resistant lighters would, therefore, be somewhat greater than 85 percent. The estimated annual benefits of a 90-percent-child-resistance standard, for example, would be about $240–$330 million, with a point estimate of about 115 deaths averted and societal savings of approximately $285 million.

Potential Costs of the Proposed Rule

Significant economic costs would likely accompany the proposed rule. Costs to industry of developing and producing child-resistant lighters would probably be passed on to consumers in the form of higher prices. The utility derived from lighters by consumers may be adversely affected, depending on how difficult the operation of lighters is made due to the use of child-resistant features or designs. Many lighter models would probably be discontinued. Although some existing novelty lighters may already meet the requirements of the proposed test method, producers and importers would still have to test and certify. Total lighter sales could be adversely affected, at least temporarily, depending on the degree of consumer switching to matches. Individual companies' short-run sales could also be restricted as a result of proposed anti-stockpiling provisions.

Effects on Industry

Manufacturers would have to modify their products to comply with the proposed rule. Most lighters would probably incorporate some sort of multi-action, spring loaded button or lever, somewhat like the safety used on firearms but which automatically resets after each activation. A variety of fixed and variable costs would be associated with these modifications. Some of these costs were incurred prior to the publication of the proposed rule. These costs include the following:

- Research and development toward finding the most promising approaches to improving child-resistance, including building prototype surrogate test lighters and conducting preliminary child panel testing;
- Redesigning products;
- Tooling and other production equipment changes, to the extent that they exceed normal periodic changeover costs;
- Incorporating additional components and assembly steps into the manufacturing process;
- Certification, testing, recordkeeping, and reporting for each new model;
- Lost revenues if sales were adversely affected; and
- Various administrative costs of compliance, such as legal support and executive time spent at standards-development meetings and activities.

Some of the larger manufacturers and importers have estimated the cost of developing child-resistant lighters. Industry-wide research and development costs on the order of tens of millions of dollars would likely be incurred by producers to design new models to meet the proposed rule. These costs would vary with the requirements (regarding scope, acceptance criterion, test protocol provisions, and effective date) of the final rule. Child-panel testing costs would also be incurred; at over $5,000 per panel and multiple panels per model, individual firms' development-related testing costs may be tens of thousands of dollars.

Based on extrapolations from individual firms' cost data, the estimated one-time tooling and related plant and equipment costs associated with new child-resistant lighters are $20–$30 million. These costs would be amortized over a number of years. The estimated level of recurring, production-related variable costs directly attributable to the proposed rule, *i. e.*, independent of changes that would accompany the normal, routine introduction of new models, is at least $25 million annually.

Certification and testing costs include costs of producing surrogate lighters where applicable (at an estimated $2,000–$3,000 per surrogate), conducting child-panel tests (at over $5,000 per test), conducting production testing, and issuing certificates and maintaining records for each model (at up to a few thousand dollars per firm, depending on how many different models are marketed by each firm). Overall industry-wide certification and testing costs to manufacturers and importers are estimated to be on the order of $1–$5 million annually. Approximately 10 percent of this total would be spent to build surrogates, 51 percent to do child testing, 27 percent to do production testing, and 12 percent for recordkeeping, reporting, and certificate issuance. Almost all of these annual costs would be necessary to a quality control program to ensure that the lighters comply with the standard. The incremental costs due to the specific requirements of the proposed rule for testing, recordkeeping, and reporting are very small.

The total cost of the proposed rule to industry may be expressed in terms of the effect on the overall per-unit cost of lighters. Though a wide range of manufacturing costs exists for the various types of lighters on the market, present overall manufacturing costs for some imported disposables can be as low as 10 cents or less per unit; the range for most disposables is 15 to 25 cents. Thus, an increase of a few cents per unit constitutes a significant cost impact. The likely increase in manufacturing costs due to the imposition of the proposed rule is estimated to vary, among the various lighter types and models, between 2 and 50 cents per unit, with an average of between 5 and 10 cents per unit. The range of expected cost increases amounts to about 10–40 percent of per-unit total manufacturing costs, with increases of less than 20 percent for most models.

Child-resistant features may be particularly difficult to incorporate into some refillable lighters with unusual designs or ignition mechanisms. Producers and importers would probably discontinue such models. For example, it may not be commercially feasible for manufacturers to add child-resistant features to certain "novelty" models, the unusual sizes or shapes of which may not readily lend themselves to the addition of buttons or other appendages. Many novelties would probably be discontinued if the proposed rule were promulgated. Novelty models for which redesign would be fairly simple would probably remain on the market. Prices for some could be higher as a result, but since the market for novelties is relatively less cost-competitive and markups are relatively higher than for other lighters, changes to improve child-resistance may not add appreciably to retail prices, especially for lighters that are already high-priced, *i.e.*, $20 or higher.

As noted above, refillable lighters that are not novelty lighters would be subject to the proposed rule only if their Customs Valuation or manufacturer's (or "ex-factory") price is less than $2.00. It is possible but unlikely that firms would be induced to raise their prices above this level in an effort to market a disposable lighter that would not have to be child-resistant. Most "refillable disposables" are reportedly not close to $2.00 in Customs Valuation or ex-factory price (no such lighters are currently produced domestically); competitive pressures would likely prevent firms from raising prices simply to avoid compliance with the proposed rule.

It is conceivable that the importer-to-retailer markup could be sufficiently small to allow an over-$2.00 (Customs Valuation) lighter to retail for only $3.00, and therefore be price-competitive with the very highest-priced child-resistant disposables. No such products are currently known to be on the market, however. The $2.00 figure provides a reasonable cutoff between disposable lighters, which are intended to be subject to the proposed rule, and luxury lighters, which are not. A lower dollar figure would allow some low-priced refillable-disposables to remain on or enter the market without a child-resistant feature; a higher dollar figure would cover some models that do not present the risk addressed by the proposal.

The proposed rule contains provisions, authorized by section 9(g)(2) of the CPSA, designed to prohibit stockpiling of noncomplying lighters between the promulgation date of a final rule (i.e., the date of publication in the **Federal Register**) and its effective date (12 months later). This essentially limits the interim production or importation of lighters that could be manufactured or imposed after the rule's effective date. Lighters in U.S. firms' inventories would not be affected if they were produced in the U.S. or imported before the promulgation date. The proposed anti-stockpiling provisions would establish a base period of any 365 consecutive-day period during the previous 5 years, and an allowable production/importation rate of 120 percent. Thus, firms manufacturing or importing lighters subject to the proposed rule could manufacture or import noncomplying lighters during the interim year at a rate not to exceed 120 percent of the rate during their chosen 365-day base periods.

The anti-stockpiling provisions would have no significant effect on most firms subject to the proposed rule, but would restrict sales growth for some small importers whose sales have increased substantially in recent years and are expected to continue to grow in the future. Some firms have doubled their sales since 1990; as noted in the discussion on competitive effects, below, these firms may be at a temporary disadvantage in the market as a result. All firms would incur administrative costs associated with recordkeeping and monitoring of production and importation levels; these costs would account for a minor proportion of overall costs of compliance.

Effects on Consumers

It is likely that the increased cost of producing child-resistant lighters would be passed on to consumers in the form of higher retail prices. Applying the estimated percentage cost increases for each product type—the various butane disposables, low-cost butane refillables, and "novelty" lighters—the likely impact on prices and on consumers' retail expenditures can be calculated. Prices of lighters that currently retail for under $3 may increase by roughly 10–40 cents per unit; for some more expensive models, including most novelties, retail prices may rise by as much as $1–5. The average increase among all lighters is estimated at about 15 cents. Costs may be lower if cost-reducing production economies are achieved, particularly among disposables; costs may be higher if presently-anticipated methods of achieving compliance were inadequate and more costly methods were necessary. The total annual cost of the proposed rule to consumers is estimated to be $95 million.

Some uncertainty exists as to how well all manufacturers would be able to incorporate necessary changes into their products. In a worst-case scenario in which manufacturers' costs were much higher and retail prices were raised by an average of 25 percent for all types of lighters, the total annual cost to consumers could be about $165 million and the maximum cost per life saved could approach $2 million. Though this scenario probably overstates the likely cost significantly, the estimated cost per life saved still falls within what is considered a reasonable range.

Another potential "cost" to consumers is the potential decrease in the utility, or convenience of operation, of the product. By their child-resistant design, complying lighters would probably be somewhat more difficult for adults to use than are the currently marketed non-child-resistant designs. Older adults, or adults with arthritis or other physical impairments, may find child-resistant lighters particularly troublesome (*i. e.*, hard to operate with one hand). This constitutes a loss to consumers; this loss which is not readily quantifiable, may diminish as more convenient complying designs are devised over time. As noted above, some consumers may switch to matches (which are free, if less convenient) if child-resistant lighters were perceived as too difficult to use. No significant long-term impact on lighter and match production and consumption is expected, though sales of some especially inconvenient or costly lighter designs could suffer. Manufacturers and importers routinely test-market their new products to establish consumer acceptance; refinements of new designs would undoubtedly be made over time as needed.

If certain novelty lighter models were discontinued due to the technical difficulty of incorporating child-resistant features into the specialized designs or physical configurations of the products, there could be a loss of utility to collectors or to other consumers who would have purchased such lighters. Some novelties, especially the higher-priced models, would probably remain on the market if the proposed rule were issued on a final basis. It is possible that some particularly unusual existing lighter models may be viewed as more collectible after their discontinuation, and may therefore increase in market value. The likely overall magnitude of any potential loss to consumers is slight.

Effects on Competition

The proposed rule may have adverse effects on competition in two areas: Among marketers of disposable lighters, and between marketers of refillables and disposables. A few major manufacturers of disposables were heavily involved in the development of the ASTM F15.02 draft voluntary standard, and gained substantial knowledge about how best to achieve compliance, how to build surrogate lighters, and other aspects of CPSC's regulatory development process. Other firms not directly participating in the ASTM standard development or not members of the Lighter Association may possess less advanced or detailed knowledge about the Commission's activities or about how to approach child-resistance as a marketing goal. Thus, some firms would be considerably closer than others to having production-ready child-resistant lighters in time to meet the proposed rule.

This may lead to some disruption of manufacturing practices among foreign producers, and could result in a temporary interruption of lighter shipments from some of those sources until all manufacturers can design new complying models and develop reasonable test programs to support certificates of compliance. For disposables generally, a significant potential effect of the proposed rule would be the narrowing of the cost and price gap between lighters marketed by the major suppliers and the recently-introduced very low-priced imports from Korea, China, Thailand, and the Philippines.

The proposed rule's anti-stockpiling provisions would also temporarily

restrict the expected growth in sales among certain small importers of the lowest-priced lighters. Up to 50 percent or more of these firms' anticipated increased shipments in the year following promulgation of the rule could be affected. This may constitute a moderate trade barrier and would confer a competitive advantage upon firms—including the largest firms — for whom significant sales increases are not expected. No permanent adverse impact on small importers is expected. Further, no significant impact on foreign trade generally is likely to be associated with the proposed rule. All manufacturers represented in the U.S. market could continue to supply non-child-resistant lighters to other world markets.

As noted above, most models of pocket refillable lighters, *i.e.*, the so-called "luxury" lighters, would remain on the market and would not be covered by the proposed rule. Some consumers may purchase these products as substitutes for child-resistant disposables, thus increasing luxury lighter sales at the expense of less costly models. Since substantial price differences would continue to exist between complying lighters and those not required to comply, the magnitude of this effect is estimated to be negligible.

Another area of market competition that may be affected by the proposed rule involves a relatively small number of imported, high-cost, "added perceived value" disposables—whose Customs Valuation may approach or exceed $2.00 by virtue of special features, such as detachable leather or metallic covers that can be reused with successive disposable lighters—and moderate cost refillables that are also close to (but higher than) $2.00. These two kinds of products compete for use as advertising or promotional aids, often by cigarette companies, and are generally given away to consumers (or as a premium with the purchase of cigarettes). The disposables would be subject to the proposed rule regardless of value, while the over-$2.00 refillables would not. If the disposables were perceived as too inconvenient compared to the refillables, then the proposed rule could adversely affect competition in the disposables segment of the market. On the other hand, if the child-resistant features of complying lighters were viewed as positive attributes by consumers, an advantage could accrue to suppliers of complying models. The extent of any such effect is uncertain, and would depend in large measure upon public perceptions about the utility of child-resistant lighters.

All lighter producers serve world markets. In order to maximize global sales, firms are expected, if the proposed rule is issued, to market both child-resistant lighters for the U. S., and non-child-resistant models for other nations. The major lighter suppliers generally have multiple manufacturing sources around the world, some of which may continue to produce only non-child-resistant models. Firms with only one manufacturing plant, or those without multinational production capability, may incur somewhat higher than average per-unit costs, *e.g.*, for production line additions (as opposed to changeover) and additional inventory controls. How this might affect prices of lighters bound for the U.S. is uncertain.

The Commission gives special consideration to the potential impact of its rules on small businesses. Most importers of lighters, particularly importers of novelties, could be considered to be small firms. It is estimated that 30–35 of the approximately 40 covered importers are small. As noted above, some of these firms may cease distribution of novelty lighters. Others may experience some disruption in supply. No significant long-term adverse impact on the profitability or viability of any importers or manufacturers is expected to result from the proposed rule; however, some temporary effects could occur.

Other Standards

As noted in the previous description of the requirements of the proposed rule, a voluntary safety standard for lighters, ASTM F400–87, exists but is not generally intended to address the risk of child-play fires. A provision of this ASTM standard calls for "keep away from children" product labeling; the Commission was aware of this standard when it determined that a regulatory proceeding should be initiated to address the potential unreasonable risk associated with lighters.

In another voluntary standard development effort, the ASTM Task Group on Safety Standards for lighters drafted a child-resistance standard for lighters. This draft standard is similar to the proposed CPSC mandatory rule. The Lighter Association has requested that the Commission propose the draft ASTM F15.02 child-resistance standard as a mandatory rule. This request is consistent with the rulemaking provisions of Section 9(a)(5) of the CPSA. The Commission assisted ASTM and industry representatives (including members of the Lighter Association) in the development of this draft standard during 1989 and 1990.

The draft ASTM voluntary standard is quite similar to the proposed mandatory rule; notwithstanding some performance requirement and test protocol differences, the technical requirements of the ASTM draft, if universally adopted, might adequately address the risk. Mandating the principal provisions of the draft ASTM standard would probably achieve almost the same level of benefits to the public as would the version developed by CPSC. Thus, although the CPSC proposal incorporates more stringent requirements supported by child test data, various aspects of the draft voluntary standard were adopted in the proposed rule.

If there were widespread voluntary conformance with child-resistance requirements, substantial safety benefits could be achieved. Uncertainy about the expected level of conformance, however, leads to the conclusion that the ASTM child-resistance effort would not adequately reduce the risk in the absence of a mandatory rule. As noted above, a significant number of very low-priced disposable lighters recently entered the price-competitive U.S. market. The share of the disposables market for these price leaders increased from under 5 percent in 1989 to 15–20 percent in 1990 and to 30–35 percent in 1991. Many of these very low-priced imports allegedly do not meet the existing ASTM F400 standard; industry sources have stated that it is unlikely that many of these products would conform to a voluntary child-resistance standard.

The extent to which manufacturers and importers would conform to a voluntary child-resistance standard is uncertain. Many firms, including most of the largest, would likely continue to market some non-child-resistant lighters indefinitely unless prohibited from doing so. The five or six largest suppliers (*i.e.*, those most likely to conform, at least in part, to a voluntary child-resistance standard) accounted for about 75–80 percent of all U.S. shipments in 1991. Thus, for a projected 1992 market approaching 650 million units, up to about 160 million non-child-resistant lighters may still be sold even if 100 percent of the current industry leaders' products conformed to the ASTM draft standard.

The major firms may feel competitive pressure to continue marketing substantial quantities of non-child-resistant lighters. Conforming firms, most of whom are already at a price disadvantage in the low end of the market, may face an additional competitive disadvantage if they passed

the costs of child-resistant lighter development on to consumers in the form of higher prices. This effect could be mitigated by product liability concerns, which could also ultimately encourage more widespread conformance among the very low-priced imports as they gain in market share and in potential liability exposure. On balance, the level of conformance to the draft voluntary standard for child resistance would, over a period of a few years, probably not be high.

The larger firms would probably market child-resistant and non-child-resistant lighters if the draft ASTM voluntary standard were adopted. Smaller suppliers would probably market only non-child-resistant models. Under these circumstances, perhaps half of all lighters sold might be child-resistant. If 50 percent of all lighters sold conformed to the draft voluntary standard (which incorporates a nominal 80 percent acceptance criterion), the estimated economic benefits would be much lower than under the proposed rule: The projected $210–$290 million in annual accident savings associated with the proposed rule would be reduced by some $125–$165 million, to approximately $85–$125 million; the estimated number of deaths avoided annually would drop from about 85–120 to about 35–50. Costs to consumers would also be lower to the extent that prices for nonconforming lighters do not increase. The effect on consumers' retail expenditures may be reduced to about $50 million. Yearly net benefits of $35–$75 million may be expected.

The proposed rule, or any of the reasonable alternatives described below, would have higher expected net benefits than the draft ASTM voluntary standard. Thus, that voluntary standard, while technically similar in most respects to the CPSC proposal, may not adequately reduce the risk associated with lighters.

Alternatives to the Proposed Rule

As described in the previous sections on benefits and costs, the proposed rule is estimated to have potential benefits to consumers of approximately $210–$290 million, and costs of roughly $95 million, annually; thus, expected yearly net benefits of the proposed rule would be about $115–$195 million. The Commission also considered reasonable alternatives to the proposed rule. The principal alternatives considered included a broader or narrower scope of product coverage, alternate acceptance criteria, and alternate effective dates. The Commission could also determine that a rule is not needed, *i.e.*, that a combination of volunary action and consumer information/education would adequately address the risk.

Alternative Scope

If the Commission broadened the scope of the proposed rule to cover all lighters, the approximately 2–3 percent of lighters sold annually that are not expected to be made child-resistant would have to comply. This could increase the expected benefits of the proposed rule, to the extent that these lighters otherwise could have been involved in future accidents that would be prevented. Consumers would not, however, be able to substitute non-child-resistant lighters for complying models. This may slightly increase the likelihood that matches would be substituted. It may also increase any adverse impact the proposed rule would have on older or handicapped consumers who might wish to use non-child-resistant luxury models.

The likelihood that benefits would be significantly increased under this alternative is slight. A very small proportion (about 6 percent) of injuries resulting from fires started by children under age 5 during the 5-year period of 1985–1989 involve refillable lighters of any kind; only one death during that period was associated with a refillable that is still on the market. If all refillables were made child-resistant, an increase in potential benefits of at most $5–$10 million annually could result. The actual increase would probably be lower.

Costs would also be increased under this alternative. Assuming that the estimated 10–20 million lighters not required to be child-resistant under the proposed rule were modified to comply, the additional estimated annual cost to consumers would be about $20–$25 million. Total annual costs would be increased to an estimated $115–$120 million, and net benefits would decrease slightly, to $100–$185 million.

Child-resistant features may also be relatively more costly to incorporate into liquid-fuel lighters, depending on the chosen method of achieving compliance. The effect on prices is uncertain; a $5 average price increase is estimated for liquid-fuel lighters, reflecting a "cost-plus" pricing assumption (*i.e.*, that a given percentage cost increase will lead to a price increase in proportion to the retail markup of the entire product). Relatively few liquid-fuel lighters are sold; thus, the total costs of the proposed rule are not particularly sensitive to even large variations in this cost component. As noted in the cost discussion above, manufacturers may incur costs of producing non-child-resistant models for shipment to other nations. One domestic firm which exports a substantial portion of its lighters may be so affected. The precise potential impact of this additional cost on prices of such firms' child-resistant models is unknown, but probably would be slight.

The Commission could also limit the scope of the proposed rule to exclude novelty lighters. These account for less than 1 percent of all lighters sold annually and for an estimated 2 percent of the fires started by children under age 5. Yet, a large number of models (probably over 100) exist; these would have to be made child-resistant or discontinued. Excluding novelty lighters would reduce the cost of the proposed rule by 1–5 percent, and would allow continued sales to consumers of products that would otherwise probably be discontinued. However, the risk associated with non-child-resistant novelty lighters, which may be particularly attractive to young children, would not be reduced; a number of fires have been associated with novelties, especially those in the shape of guns. Thus, the potential benefits of the proposal may be lessened slightly if novelties were excluded.

Alternate Acceptance Criterion

The proposed rule would require that complying lighters be tested using controlled panels of young children, and be inoperable by at least 85 percent of the children in the specified test series. Most firms would be able to meet this acceptance criterion without substantial technical difficulty, although significant costs may accompany the institution of additional component quality and manufacturing process controls. The Commission considered lower (80 percent) and higher (90 percent) acceptance criterion alternatives during the development of the proposal.

Under the 80 percent alternative, minimum benefits would be slightly lower—about $175–$250 million per year, compared to $210–$290 million per year for the proposed 85 percent rule. Costs could be slightly lower, to the extent that some firms may be able to comply with designs that could not meet an 85 percent rule. Firms accounting for most lighters sold, however, can reportedly achieve 85 percent with designs intended to meet a development target of 80 percent; thus, estimated costs are similar under either alternative, and net benefits would likely be higher under the proposed 85 percent rule. Although some firms, including some small importers, may have difficulty in complying with the proposed rule, lowering the acceptance

criterion to 80 percent would probably not significantly reduce the potential effects on costs and competition.

Under the 90 percent alternative, minimum benefits would be somewhat higher—about $240–$330 million per year, assuming that firms could comply in about the same manner as under the proposed 85 percent rule. No test data exist, however, for production units of child-resistant lighter designs. Some firms may be able to meet a 90 percent rule; however, most probably cannot reliably mass-produce complying lighters at this level. As noted in the cost discussion above, in order to meet a given acceptance criterion within component and assembly quality control limits, and considering potential variation in the results of testing, manufacturers would have to make products that perform somewhat better than the specified level. Under the proposed 85 percent rule, lighters on the market would have to achieve test results averaging at least 89 percent child-resistance, in order to provide reasonable assurance that tests by the Commission's staff would not give results below 85 percent in a sample of 200 children.

A 90 percent rule would essentially require production lighters to obtain test results averaging at least 93 percent child-resistance, in order to allow for possible variations in future test results and variations in child-resistance that could be caused by manufacturing tolerances. Although new lighter designs would likely be sufficiently child-resistant to comply with an 85 percent acceptance criterion, such designs are less likely to be successful at the 90 percent level.

The level of costs associated with a 90 percent rule is uncertain; it would probably be substantially higher, however, than under the proposed 85 percent rule. Assuming technical feasibility and price increases of up to 25 percent for some models, the annual cost of a 90 percent rule to consumers may be roughly $135 million. Some models, particularly push-button units using flints (including most novelties), may be discontinued, at least temporarily, under this alternative. The potential adverse impact of the rule on the utility and convenience of the product may also be significantly greater, although no data exist to estimate the incremental extent of this effect. Although yearly net benefits could be about as high ($105–$195 million) under this alternative as under the 85 percent proposal, no data exist to confirm the technical and commercial feasibility of lighters that would meet a 90 percent rule; the available evidence suggests that additional economic disruption may result, and that consumer choice may be limited, if such a rule were issued.

Alternative Effective Date

The proposed rule contains an effective date of 12 months after publication of the final rule in the **Federal Register**. This means that lighters subject to the rule that are manufactured or imported on and after the effective date must comply. The Commission also considered a shorter, 6-month effective date, which would confer the benefits of child-resistant lighters upon consumers as soon as possible. Child-resistant versions of the most popular brands of disposable lighters could probably be introduced within 6 months. Introductions of some are anticipated to occur before the issuance of a final rule; it is possible that a majority of lighters subject to the proposal would be child-resistant by that time. Thus, although benefits during the year following the issuance of a final rule might be somewhat greater under a 6-month effective date, the extent of this effect is uncertain.

The potential safety benefits of mandating a shorter effective date are uncertain, and may depend on a number of factors, including the extent to which firms introduce complying lighters early, the level of consumer stockpiling of noncomplying units, and the ability of some firms to increase short-run production or importation to meet consumer demand for disposable lighters. A significant portion of the annual benefits projected for the proposed rule would probably accrue during the period between the promulgation of the rule and its effective date, assuming early, voluntary introduction of child-resistant lighters by the major firms. One lighter manufacturer is known to be shipping a child-resistant electronic ignition pushbutton model for delivery to the United States. The benefits could be increased by imposing a 6-month effective date, if there were no effect on sales and use of disposable lighters.

A 6-month effective date would also increase the economic burden of the proposal. Some importers may experience difficulty in receiving shipments of complying lighters, since some foreign firms may not have designed their child-resistant models, and since extra time may be needed for overseas shipment. The proposed effective date of 12 months, rather than 6 months, after the publication date of the final rule minimizes this potential adverse effect. It is unlikely that the overall cost of the proposed rule would be greatly affected by a 6-month effective date, assuming that major firms with complying products could increase their production to satisfy consumer demand. A 12-month effective date would, however, virtually eliminate any potential import disruption. The Commission solicits comment on the extent to which an effective date shorter than 12 months might increase safety benefits or increase costs and impose other disruptive effects on the cigarette lighter industry.

No Regulatory Action: Rely on Voluntary Action or Information and Education Programs

The Commission considered whether it should conclude that a rule is not reasonably necessary to reduce the risk associated with lighters. Under this alternative, voluntary action, presumably under an ASTM or other industry-wide standard, would be relied upon to provide safety to the public. This could be coupled with CPSC information and education activities, either similar to those presently in operation or at some enhanced level. Potential product liability exposure may be a powerful incentive for the major lighter marketers to conform to a voluntary standard. It is also possible that some states, localities, or even other nations (*e.g.*, Canada) may adopt the draft standard, or some variation of it, as mandatory.

The potential effects of this alternative on estimated benefits and costs are described in the section on other standards, above. Although costs may be the lowest of any alternative considered, net benefits would also be the lowest. Under a generous set of assumptions about likely conformance to the ASTM draft, the net benefits associated with a voluntary industry action alternative would probably be about half the level associated with the proposed rule.

Cost savings associated with this alternative may be reduced to the extent that state or other regulations differed from the proposed rule or from each other; the preemptive effect of a mandatory CPSC rule would eliminate some potential costs of meeting multiple, possibly conflicting state or other regulations. Further, since substantial uncertainty exists about the prospect for continued conformance to existing voluntary guidelines, potential benefits of a no-mandatory-action option could decline over time.

CPSC currently sponsors information campaigns about matches and lighters. Costs to the public associated with any

new information programs would be essentially zero. Although the likely level of safety benefits of such programs is difficult to estimate, the level would be very low compared to that which could be achieved with either a mandatory or voluntary standard. Information/education activities probably would be continued or enhanced if a mandatory rule were issued; the estimate of benefits of the proposed rule takes this presumption into account.

A summary of the likely economic impact of the proposed rule and major alternatives is provided in Table 5. The table shows that substantial net benefits may be expected to result from action to address the risk of child-play lighter fires. The proposed rule covering all disposable lighters, including "disposable refillables," and novelties offers the greatest potential net benefits.

TABLE 5.—SUMMARY IMPACT OF PROPOSED RULE AND ALTERNATIVES

Annual Impact on Consumers ($ million)

Alternative	Estimated benefits	Estimated costs	Net benefits
Proposed Rule	210–290*	95	115–195
Expanded Scope (all lighters)	215–300*	115	100–185
Limited Scope (exclude novelties)	205–280*	90	115–190
Lower Acceptance Criterion (80 percent level)	175–250	95	80–155
Higher Acceptance Criterion (90 percent level)	240–330	135**	105–195**
No Action (rely on vol. action) assuming 50 percent conformance	85–125	50	35–75

* Assumes 85 percent acceptance criterion, CPSC test protocol; benefits would likely be somewhat higher if lighter modifications were more effective than rule required.

** Technical and commercial feasibility of 90 percent rule is uncertain; this level may not be attainable for most firms. Costs are therefore unknown; estimate given assumes technical and commercial feasibility and price increases of 25 percent for some models.

Source: CPSC/Economic Analysis estimates. All numbers rounded to nearest $5 million for ease of comparison.

After considering the foregoing information, the Commission concludes preliminarily that:

1. The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product;

2. The promulgation of the rule is in the public interest;

3. The benefits of the rule bear a reasonable relationship to its costs; and

4. The rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

X. Preliminary Environmental Assessment

Pursuant to the National Environmental Policy Act and in accordance with CPSC's procedures, consideration was given to the potential environmental effects of the proposed consumer product safety rule for lighters.

Most of the over 600 million lighters sold annually in the U.S. and subject to the proposed rule are imported; only one firm presently manufactures lighters that would be subject to the proposed rule in the United States. To achieve compliance with the rule, most producing firms would likely add mechanical child-resistant features to their products. Some models of lighters, accounting for less than one percent of all lighter shipments, may be discontinued as a result of the proposed rule. The proposed rule is prospective in nature, and would not require the recall, destruction, or disposal of existing units. Products manufactured or imported before the effective date of the proposed rule could be sold after the effective date, so existing product inventories would be unaffected. Anti-stockpiling provisions of the proposed rule would limit the production or importation of noncomplying lighters between the rule's promulgation date and effective date.

Molds used in the production of component parts are replaced periodically by manufacturers. While some of these may be replaced more quickly than normal for some firms, the proposed effective date of 12 months after publication of a final resistance rule would allow most firms ample time for such changes.

No changes in the amounts of butane or other fuels used in lighters would result from the issuance of the proposed rule. Production of prototype test lighters may require occasional emptying of butane gas from production line samples, but the extent of this practice would be very slight (typically under 100 individual lighters per production facility; there are probably fewer than 5 such facilities in the U.S.).

The proposed rule contains no labeling or packaging requirements that would change the way lighters are packaged for sale. There would be no significant impact on either domestic consumption of or domestic and foreign suppliers of raw materials used in the manufacture of the various plastic and metal lighter components. No significant change in the consumption or disposal of lighters by consumers is anticipated as a result.

It is concluded from the available information that the proposed rule for lighters would not significantly affect raw material use, air or water quality, manufacturing processes, or disposal practices in a way that would cause any significant impact on the environment.

XI. Initial Regulatory Flexibility Analysis

Introduction

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that proposed rules be reviewed for their potential economic impact on small entities, including small businesses. The RFA, at 5 U.S.C. 603, requires agencies to prepare and make available for public comment an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The Initial Regulatory Flexibility Analysis is required to contain:

1. A description of the reasons why action by the agency is being considered;

2. A succinct statement of the objectives of, and legal basis for, the proposed rule;

3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record; and

5. An identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

In addition, the Initial Regulatory Flexibility Analysis must contain a

description of any significant alternatives to the proposed rule that would accomplish the stated objectives of the applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. Suggested alternatives for discussion include: different compliance or reporting requirements for small entities; clarification, consolidation or simplification of compliance or reporting requirements for small entities; the use of performance rather than design standards; and partial or total exemptions from coverage for small entities.

From the information currently available to the Commission, it is uncertain whether the proposed rule would have a significant economic impact on a substantial number of small entities. About 40 firms—all importers—are believed to manufacture or import lighters subject to the proposed rule; 30–35 of these reportedly have annual sales of less than $5 million and fewer than 50 employees, and may be considered to be small. The single known domestic manufacturer of lighters subject to the proposal, which also, imports lighters, is not small.

Reasons for Agency Action

The Commission's proposed rule on lighters addresses the risk of death and injury from accidental residential fires started by young children playing with lighters. From 1987 to 1989, an estimated 180 deaths per year resulted from such fires. About 170 of these deaths, plus nearly 1,200, injuries and $60 million in property damage, resulted from fires started by children under the age of 5. Fire-related injuries include thermal burns—many of high severity—as well as nonfatal anoxia and other, less serious injuries. The annual cost of such fires to the public is estimated at about $415 million (in 1990 dollars). Fires started by young children (under age 5) are those against which the proposed rule would be most effective.

A draft voluntary safety standard was developed during 1989 and 1990 by the ASTM F15.02 Task Group, Safety Standards for Lighters, in cooperation with the Lighter Association, an industry trade organization. The Commission considered relying on this voluntary effort as an alternative to a proposed mandatory rule. Work on the development of this voluntary standard was suspended in 1991, however, and the Lighter Association requested that the Commission adopt the ASTM draft's provisions as a mandatory rule. Although the larger firms would probably market some child-resistant lighters in the absence of mandatory action, the likely overall level of voluntary conformance is uncertain, and may be unacceptably low.

Objectives of and Legal Basis for the Proposed Rule

As noted above, the proposed rule is designed to reduce the risk of fires, deaths, and injuries caused by children playing with lighters. By requiring that lighters be made child-resistant (as defined in the proposed rule and in accordance with a prescribed test method), a substantial reduction in the incidence and cost to society of these accidental fires may be expected. A majority of deaths and injuries from such accidents would be avoided if the proposed rule were promulgated. The statutory authority for issuing the rule is discussed earlier in this notice and in the proposed rule under section 30(d) of the CPSA that is published elsewhere in this issue of the **Federal Register**.

Firms Subject to the Proposed Rule

The proposed rule covers certain manufacturers and importers of lighters intended for sale to consumers. Roughly 50 U.S. firms manufacture or import lighters. About 40 of these firms market products subject to the proposed rule. The largest four firms account for over 80 percent of all lighters sold. Although a substantial proportion of subject lighters are domestically produced by the largest firm (BIC Corporation), all known firms in the market are importers. Only BIC currently manufactures lighters in the U.S. Some firms are subsidiaries or affiliates of foreign manufacturers or other companies.

Of the roughly 40 known importers covered by the proposed rule, 30–35 are believed to have annual sales of less than $5 million and to have fewer than 50 employees. These firms are considered to be small for the purposes of this analysis.

Requirements of the Proposed Rule

The proposed rule contains performance requirements that would require most kinds of cigarette lighters to be child-resistant. The major component of the proposal is a test protocol for use in establishing and verifying compliance. The protocol prescribes tests in which panels of young children would attempt to operate lighters that do not contain fuel and that provide a signal to indicate when they have been operated in a way that would cause a flame in a production lighter. Manufacturers and importers would be required to label individual lighters, certify that their products comply with the rule, provide evidence of a reasonable testing program to support such certification, maintain testing and production records, and provide reports and product samples to the Commission. Firms would use the protocol in the proposed rule to evaluate and certify their child-resistant designs. Most manufacturers would build modified or "surrogate" lighters to perform the test protocol. Complying lighter designs would be those for which test lighters were not operable by at least 85 percent of the children tested under the protocol. It is proposed that lighters manufactured or imported 12 months after the date of publication of a final rule in the **Federal Register** would have to comply. In addition, proposed anti-stockpiling provisions would limit the production or importation of noncomplying lighters between the publication date and effective date of a final rule.

Some small firms may lack the technical capability to develop child-resistant lighters that would meet the proposed rule. Some small firms may leave the U.S. market, at least temporarily; others may experience disruption in the supply of lighters, which may adversely affect their competitive positions in the U.S. market. In addition, potential production cost increases attributable to the proposed rule, which could lead to higher importers' costs and higher wholesale and retail prices, may disproportionately affect small firms due to their low unit sales volumes.

Small manufacturers and importers would be subject to all of the performance, testing, and certification provisions of the proposed rule. Some small manufacturers and importers would not generally possess the necessary skills to conduct testing. Product testing would likely be performed by independent quality control or other engineering laboratories equipped to conduct such tests. Records would probably be prepared by the test laboratories and maintained by manufacturing plant personnel; copies of reports and certification records would probably be maintained by importers or their legal counsels. No special skills not already available to manufacturers and importers would be required to establish or verify compliance with the proposed rule.

Other Federal Rules

No Federal rules are known to exist which duplicate, overlap, or conflict with the proposed rule.

Alternatives to the Proposed Rule

As noted above, the Commission encouraged and participated in the

development of a voluntary safety standard for lighters. The major provisions of the draft of this standard are similar to those of the proposed mandatory rule. Although the voluntary action alternative was considered by the Commission, it is unlikely that more than a few of the largest firms would market significant numbers of child-resistant lighters if not required to do so. In fact, the likelihood that small firms would not voluntarily market child-resistant lighters is a prominent factor in the decision to propose a mandatory rule. The Commission concludes that voluntary action would not adequately reduce the risk; that alternative, therefore, is not discussed further in this analysis.

The Commission considered three basic alternatives to elements of the proposed rule in an effort to lessen the potential burden on small firms. These involve: (1) Narrowing the scope of coverage; (2) modifying certain performance or other technical requirements; and (3) extending the effective date. These alternatives are discussed below.

Alternative Scope

The proposed rule covers most, but not all, kinds of lighters intended primarily for use with smoking materials. The products covered are butane-fueled disposable lighters, including all nonrefillable models and inexpensive refillables, and "novelty" lighters, which are defined as any lighters that resemble other objects. Novelties are often in the shape of guns, animals, automobiles, airplanes, ice cream cones or other articles that might be particularly attractive to children. This scope would cover an estimated 97–98 percent of all lighters marketed in the U.S. The proposal excludes an identifiable category of higher-priced products known as "luxury" lighters, principally on the basis that the likely costs to consumers and the potential adverse effects on small manufacturers and importers of these items would not be justified by the negligible beneficial impact of making such products child-resistant. Although the proposed rule would not specifically exempt small firms, a vast majority of the products not covered by the proposed rule are marketed by small firms.

Some small firms may find the modifications required by the proposed rule more difficult or costly to achieve than will larger firms with more technical expertise or experience with developing products to comply with regulations. Although no firms are expected to go out of business as a result of the proposed rule, some novelty lighters imported by small firms would probably be discontinued if the proposed rule is enacted. To the extent that this would occur, excluding some or all such products from coverage would tend to reduce the impact on small firms. It is estimated that limiting the scope to exclude some or all novelty lighters would yield annual cost savings to small firms of up to a few million dollars. The potential safety benefits of the proposed rule to the public would also decrease by a small but uncertain amount, since non-child-resistant novelty lighters, which may be particularly attractive to children, would remain on the market.

Alternative Requirements

The Commission considered a variety of alternatives to the performance and other technical requirements of the proposed rule. Chief among these were alternate acceptance criteria for child-resistant lighter performance. The proposed rule would require that lighters be inoperable by at least 85 percent of the children in the test panel. Both lower and higher levels of required test performance were considered. The higher level (90 percent), if technically feasible, potentially could have greater safety benefits to consumers, but it also could entail potentially significant disruptive effects on industry, including small importers. The lower level (80 percent), which would reduce the stringency and the potential benefits—of the proposed rule, would yield uncertain, if any, economic savings for small firms.

The anti-stockpiling provisions of the proposed rule, however, may significantly affect competition among firms, and may confer an advantage upon larger firms, whose sales are not generally increasing. A number of small importers have experienced rapid sales growth—up to 100 percent annually—in recent years, mainly because of the retail price advantage their products enjoy in the highly competitive U.S. market. The proposed limitation on stockpiling would cap the rate of production or importation of noncomplying lighters for any manufacturer or importer at 120 percent of the rate in a base period (any 365-consecutive-day period during the 5 years prior to the publication date of the final rule) selected by the firm.

It is likely that small firms would be relatively less able to secure supplies of complying lighters before the effective date. Thus, the proposed anti-stockpiling provisions could adversely affect sales growth that might otherwise occur among small importers, beyond any impact of the performance requirements. The extent of this effect is uncertain, since market acceptance of new designs is untested and small firms' sales of available complying lighters may not grow at the rates projected for existing, non-child-resistant models. The overall likelihood, however, is that small importers would be disproportionately affected by the proposed anti-stockpiling provisions. This anti-competitive impact on small firms could be mitigated by exempting small firms from the anti-stockpiling provisions, or by substantially increasing the allowable importation rate (e.g., to 150 percent) of noncomplying products during the 12-month interim period. This would, however, tend to confer the economic benefit on small firms at the expense of larger ones, and could allow up to 150 million or more non-child-resistant lighters to be sold during that interim year. This would delay a portion of the expected safety benefits of the proposed rule until such time as all lighters available to consumers complied with the rule.

Alternative Effective Date

The proposed rule would become effective 12 months after publication of the final rule in the **Federal Register**, and all lighters subject to the rule that are manufactured in the United States or are imported on or after the effective date must comply. Some small importers, particularly those representing smaller foreign manufacturers, may experience difficulty in receiving shipments of complying lighters by the effective date. Since the anti-stockpiling provisions of the proposed rule would limit the number of non-child-resistant lighters that could be imported after promulgation of a final rule, small firms unable to secure complying units may be adversely affected to the extent that their sales volume of noncomplying lighters could not increase by more than 20 percent of their previous highest-volume 365-day period. This effect would likely be smaller for large firms.

Delaying the effective date by an additional 6–12 months would allow delaying the introduction of some models of complying lighters, and might reduce the potential disruption among small firms. Companies that would benefit from such a delay accounted for about 20–25 percent of all lighters sold during 1991. This share could increase significantly in the short run if consumers preferred noncomplying models (*e.g.*, because of lower prices or greater convenience of operation).

While the overall effect of an additional delay in the proposed rule's effective date on the cost of the proposed rule is uncertain, a reduction

in potential safety benefits to consumers is likely. This adverse impact on potential benefits may exceed the potential reduction in costs to small firms or to consumers. The proposed 12-month effective date in the proposed rule provides a balance between the need to confer the safety benefits of child-resistant lighters upon consumers as soon as reasonably possible and consideration of the proposal's potential effects on industry, including small importers.

Summary and Conclusion

The Commission's proposed rule on lighters affects most U.S. firms manufacturing or importing these products. Most of the firms whose lighters would be subject to the rule are small firms that import lighters from foreign manufacturers. The proposal may have temporary disproportionate adverse effects on small firms, although it is uncertain whether the potential effects would be "significant."

The Commission considered a variety of burden-reducing alternatives during the development of the proposed rule. Some provisions incorporated into the proposal would minimize potential adverse economic effects on small companies. Examples of this include: (1) Excluding certain lighters from the proposed scope of coverage; (2) setting the acceptance criterion and other performance requirements at levels attainable with existing technology; and (3) establishing a proposed effective date that accounts for difficulties in developing new designs and in obtaining complying lighters from foreign suppliers. Alternatives that would further reduce potential effects on small firms were considered in each of these areas; the proposed rule balances the need for consumer safety and the potential economic costs of a rule to consumers and to industry, including small importers. The proposed rule contains a number of other provisions regarding certification, labeling, and recordkeeping; these would not have significant adverse effects on small firms.

XII. Paperwork Reduction Act

As noted above, the proposed standard and certification provisions will require manufacturers and importers of disposable and novelty lighters to perform testing and to maintain records relating to the lighters that they produce or import. For this reason, the proposed rule published below contains "collection of information requirements," as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501–3520. Therefore, this proposal has been submitted to the Office of Management and Budget ("OMB") in accordance with 44 U.S.C. 3504(h) and implementing regulations codified at 5 CFR 1320.13. Any person who desires to comment to OMB on the collection of information requirements in the proposal should address those comments to:

Office of Management and Budget, Office of Information and Regulatory Policy, Attention: Shawn Canter, Desk Officer, Washington, DC 20503, (Telephone (202) 395–7340).

XIII. Extension of Time To Issue Final Rule

Section 9(d) (1) of the CPSA, 15 U.S.C. 2058 (d) (1), provides that a final consumer product safety rule must be published within 60 days of publication of the proposed rule unless the Commission extends the 60-day period for good cause and publishes its reasons for the extension in the **Federal Register**. Executive Order 12662, which implements the United States-Canada Free-Trade Implementation Act, provides that publication of proposed standards-related measures shall ordinarily be at least 75 days before the comment due date. Accordingly, the Commission has provided a comment period of 75 days for this proposal. After the comments are received, they must be analyzed, and a briefing package will be prepared for the Commission's consideration that describes the comments received, the staff's recommended responses to the issues in the comments, any new information concerning the relevant issues and findings, and a staff recommendation on whether to issue a final rule. In addition, the Commission will have to vote on whether to issue a final rule, and, if a final rule is approved, a **Federal Register** notice responding to the comments on the proposal and containing the required findings will have to be prepared.

The Commission estimates that the activities described above are likely to take about 9 months after publication of the proposed rule and that this constitutes good cause for extending the 60-day period after publication of a proposed rule that is provided by the CPSA as the time during which a final rule shall be published. Accordingly, the Commission extends the time during which it may publish the final rule to April 30, 1993. This period may be extended further for good cause.

Public Law 101–608 amended section 9(c) of the CPSA to require that a proposed rule be issued within 12 months of the publication of an ANPR, unless the Commission determined that a proposed rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury or that a proposed rule is not in the public interest. Consumer Product Safety Improvement Act of 1990, Public Law 101–608, section 109, 1990 U.S. Code Cong. & Admin. News (104 Stat.) 3113. The Commission also may extend the 12-month period for good cause. *Id.*

Since the ANPR in this proceeding was issued more than 1 year before the enactment of Pub. L. No. 101–608, the Commission concludes that the requirement that a proposed rule be published within 12 months of its ANPR is inapplicable to this proceeding and that it is unnecessary to formally extend the period for issuing the proposal. In any event, the following facts constitute good cause for issuing this proposed rule more than 12 months after publication of the ANPR:

1. That the statutory amendment was enacted more than 1 year after the publication of the ANPR, and

2. That additional testing was required to resolve inconsistent results obtained in the verification testing and to determine the performance of various designs in tests of child-resistant lighters.

List of Subjects in 16 CFR Part 1210

Cigarette lighters, Consumer protection, Fire prevention, Hazardous materials, Infants and children, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 16 chapter II, subchapter B, of the Code of Federal Regulations is proposed to be amended as set forth below.

1. A new part 1210 is added to read as follows:

PART 1210—SAFETY STANDARD FOR CIGARETTE LIGHTERS

Subpart A—Requirements for Child-Resistance

Sec.

Authority: 15 U.S.C. 2056, 2058, 2079(d).

Subpart B—Certification Requirements

Sec.

Subpart A—Requirements for Child-Resistance

§ 1210.1 Scope, application, and effective date.

This part 1210, a consumer product safety standard, prescribes requirements for disposable and novelty lighters. These requirements are intended to make the lighters subject to the standard's provisions resistant to successful operation by children younger than 5 years of age. This standard applies to all disposable and novelty lighters, as defined in § 1210.2, that are manufactured or imported after the date that is 12 months after publication of a final rule in the Federal Register.

§ 1210.2 Definitions.

As used in this part 1210:

(a) *Cigarette lighter.* See "lighter."

(b) *Disposable lighter* means a lighter that either is: (1) not refillable with fuel or (2) (i) its fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75°F (24°C) exceeds a gage pressure of 15 psi (103 kPa), and

(ii) it has a Customs Valuation or ex-factory price under $2.00, as adjusted every 5 years, to the nearest $0.25, in accordance with the percentage changes in the monthly Wholesale Price Index from the month preceding the date of publication of a final rule in the Federal Register.

(c) *Lighter,* also referred to as "cigarette lighter," means a flame-producing product commonly used by consumers to ignite cigarettes, cigars, and pipes, although they may be used to ignite other materials. This term does not include matches or any other lighting device intended primarily for igniting materials other than smoking materials, such as fuel for fireplaces or for charcoal or gas-fired grills. When used in this part 1210, the term "lighter" includes only the disposable and novelty lighters to which this regulation applies.

(d) *Novelty lighter* means a lighter that resembles any other object in physical form or function, for example, a car, an ice cream cone, a spaceship, a gun, a wrist watch, a tool, a pack of cigarettes, a camera, a liquor bottle, a spark plug, or a tourist memento (*e.g.,* a model of the Statue of Liberty). A novelty lighter may operate on any fuel, including butane or liquid fuel.

(e) *Successful operation* means one signal of any duration from a surrogate lighter within the 10-minute test period specified in § 1210.4(f).

(f) *Surrogate lighter* means a device that approximates the appearance, size, shape, and weight of, and is identical in all other factors that affect child-resistance (including operation and the force (s) required for operation), within reasonable manufacturing tolerances, to, a lighter intended for use, but which has no fuel, does not produce a flame, and produces an audible or visual signal that will be clearly discernible when the surrogate lighter is activated in each manner that would normally produce a flame in a production lighter. (This definition does not require a lighter to be modified with electronics or the like to produce a signal. Manufacturers may use a lighter without fuel as a surrogate lighter if a distinct signal such as a "click" can be heard clearly when the mechanism is operated in each manner that would produce a flame in a production lighter and if a flame cannot be produced in a production lighter without the signal. But see § 1210.4(f) (1).)

§ 1210.3 Requirements for cigarette lighters.

(a) A lighter subject to this part 1210 shall be resistant to successful operation by at least 85 percent of the child-test panel when tested in the manner prescribed by § 1210.4.

(b) The mechanism or system of a lighter subject to this part 1210 that makes the product resist successful operation by children must:

(1) Reset itself automatically after each operation of the ignition mechanism of the lighter, (2) Not impair safe operation of the lighter when used in a normal and convenient manner,

(3) Be effective for the reasonably expected life of the lighter, and

(4) Not be easily overriden or deactivated.

§ 1210.4 Test protocol.

(a) *Child test panel.* (1) The test to determine if a lighter is resistant to successful operation by children uses a panel of children to test a surrogate lighter representing the production lighter intended for use. Written informed consent shall be obtained from a parent or legal guardian of a child before the child participates in the test.

(2) The test shall be conducted using at least one, but no more than two, 100-child test panels in accordance with the provisions of § 1210.4(f).

(3) The children for the test panel shall be from the United States, except that children from another country may be used if the firm required to certify first tests one of its child-resistant lighter designs in both the United States and the other country and the results are not significantly different at $p=0.05$.

(4) The age and sex distribution of each 100-child panel shall be:

(i) 30 children (20 males; 10 females) 42 through 44 months old; (ii) 40 children (26 males; 14 females) 45 through 48 months old;

(iii) 30 children (20 males; 10 females) 49 through 51 months old.

(5) No child with a permanent or temporary illness, injury, or handicap that would interfere with the child's ability to operate the surrogate lighter shall be selected for participation.

(6) Two children at a time shall participate in testing of surrogate lighters. Extra children whose results will not be counted in the test may be used if necessary to provide the required partner for test subjects, if the extra children are within the required age range and a parent or guardian of each such child has signed a consent form.

(7) No child shall participate in more than one test panel or test more than one surrogate lighter. No child shall participate in both child-resistant package testing and surrogate lighter testing on the same day.

(b) *Test sites, environment, and adult testers.* (1) Surrogate lighters shall be tested at 5 or more test sites for each 100-child panel, with a maximum of 20 children tested at each site.

(2) Testing of surrogate lighters shall be conducted at a location that is familiar to the children on the test panel (for example, their customary nursery school or day care center). The area in which the testing is conducted shall be well-lighted and isolated from distractions. The children shall be allowed freedom of movement to work with their surrogate lighters, as long as the tester can watch both children at the same time. Two children at a time shall participate in testing of surrogate lighters. The children shall be seated side by side in chairs approximately 1.5 feet apart, across a table from the tester. The table shall be normal table height for the children, so that they can sit up at the table with their legs underneath and so that their arms will be at a comfortable height when on top of the table. The children's chairs shall be "child-size."

(3) Each tester shall be at least 18 years old. Five or 6 adult testers shall be used for each 100-child test panel. Each tester shall test an approximately equal number of children from a 100-child test panel (20 ± 2 children each for 5 testers and 17 ± 2 children each for 6 testers).

(c) *Surrogate lighters.* (1) Six surrogate lighters shall be used for each 100-child panel. The six lighters shall represent the range of forces required for operation of lighters intended for use. All surrogate lighters shall be the same color. The surrogate lighters shall be numbered sequentially from one through six. The same six surrogate lighters shall be used for the entire 100-child panel. The surrogate lighters shall not be damaged or jarred during storage or transportation. The surrogate lighters shall not be exposed to extreme heat or cold. The surrogate lighters shall be tested at room temperature. No surrogate lighter shall be left unattended.

(2) Each surrogate lighter shall be used for 14–18 children in the 100-child panel.

(3) Before each 100-child panel is tested, each surrogate lighter shall be examined to verify that it approximates the appearance, size, shape, and weight of a production lighter intended for use.

(4) Before and after each 100-child panel is tested, force measurements shall be taken on all operating components that could affect child-resistance to verify that they are within reasonable operating tolerances for a production lighter intended for use.

(5) Before and after testing surrogate lighters with each child, each surrogate lighter shall be operated outside the presence of any child participating in the test to verify that the lighters produce a signal. If the surrogate lighter will not produce a signal before the test, it shall be repaired before it is used in testing. If the surrogate lighter does not produce a signal when it is operated after the test, the results for the preceding test with that lighter shall be eliminated. The lighter shall be repaired and tested with another eligible child (as one of a pair of children) to complete the test panel.

(d) *Encouragement.* (1) Prior to the test, the tester shall talk to the children in a normal and friendly tone to make them feel at ease and to gain their confidence.

(2) The tester shall tell the children that he or she needs their help for a special job. The children shall not be promised a reward of any kind for participating, and shall not be told that the test is a game or contest or that it is fun.

(3) The tester shall not discourage a child from attempting to operate the surrogate lighter at any time unless a child is in danger of hurting himself or another child. The tester shall not discuss the dangers of lighters or matches with the children to be tested prior to the end of the 10-minute test.

(4) Whenever a child has stopped attempting to operate the surrogate lighter for a period of approximately one minute, the tester shall encourage the child to try by saying "keep trying for just a little longer."

(5) Whenever a child says that his or her parent, grandparent, guardian, etc., said never to touch lighters, say "that's right—never touch a real lighter—but your [parent, etc.] said it was OK for you to try to make a [beep, click, etc.] with this special lighter because it can't hurt you."

(6) The children in a pair being tested may encourage each other to operate the surrogate lighter and may tell or show each other how to operate it. (This interaction is *not* considered to be disruption as described in paragraph (e) (2) below.) However, neither child shall be allowed to operate the other child's lighter. If one child takes the other child's surrogate lighter, that surrogate lighter shall be immediately returned to the proper child. If this occurs, the tester shall say "No. He(she) has to try to do it himself(herself)."

(e) *Children who refuse to participate.* (1) If a child becomes upset or afraid, and cannot be reassured before the test starts, select another eligible child for participation in that pair.

(2) If a child disrupts the participation of another child for more than one minute during the test, the test shall be stopped and both children eliminated from the results. An explanation shall be recorded on the data collection record. These two children should be replaced with other eligible children to complete the test panel.

(3) If a child is not disruptive but refuses to attempt to operate the surrogate lighter throughout the entire test period, that child shall be eliminated from the test results and an explanation shall be recorded on the data collection record. The child shall be replaced with another eligible child (as one of a pair of children) to complete the test panel.

(f) *Test procedure.* (1) To begin the test, the tester shall say "I have a special lighter that will not make a flame. It make a ["beep," "click," or other descriptive term for the signal] like this." Except where doing so would block the child's view of a visual signal, the adult tester shall place a 8½ by 11 inch sheet of cardboard or other rigid opaque material upright on the table in front of the surrogate lighter, so that the surrogate lighter cannot be seen by the child, and shall operate the surrogate lighter once to produce its signal. The tester shall say "Your parents said it is OK for you to try to make that [beep, click, etc.] with your lighter." The tester shall place a surrogate lighter in each child's hand and say "now you try to make a [beep, click, etc., as appropriate for signal used by the particular surrogate lighter] with your lighter."

(2) The adult tester shall observe the children for 5 minutes to determine if either or both of the children can successfully operate the surrogate lighter by producing one signal of any duration. If a child achieves a spark without defeating the child-resistant feature, say "that's a spark—it won't hurt you—try to make a [beep, click, etc.] with your lighter." If any child successfully operates the surrogate lighter during this period, the surrogate lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(3) If either or both of the children are unable to successfully operate the surrogate lighter during the 5-minute period specified in § 1210.4(f) (3), the adult tester shall demonstrate the operation of the surrogate lighter. To conduct the demonstration, secure the children's full attention by saying "put your lighters down for a minute and I will show you how to make the lighter [beep, click, etc.]." Use one of the children's lighters. Hold the surrogate lighter approximately two feet in front of the children at their eye level so that the child-resistant feature is oriented toward the children. Operate the lighter three times in a normal one-handed manner with approximately three seconds between each operation. Do not exaggerate operating movements. Do not verbally describe the lighter's operation.

Note: Testers must be able to operate the surrogate lighters three times in sequence using only appropriate operating movements. If this is not accomplished during the demonstration for any pair of children, the results for that pair of children shall be eliminated from the test. Another pair of eligible children shall be used to complete the test panel.

(4) Each child who fails to successfully operate the surrogate lighter in the first 5 minutes is then given another 5 minutes in which to attempt to complete the successful operation of the surrogate lighter. The tester shall say "now try to make a [beep, click, etc.] with your lighter." If any child

successfully operates the surrogate lighter during this period, the surrogate lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(5) At the end of the second 5-minute test period, take the surrogate lighter from any child who has not successfully operated it.

(6) After the test is over, say: "These are special lighters that don't make fire. Real lighters can burn you. Will you promise me that you'll never try to work a real lighter?" Wait for the child's answer; then thank the child for helping.

(7) Escort the children out of the room used for testing.

(8) After a child has participated in the testing of a surrogate lighter, and on the same day, provide written notice of that fact to the child's parent or guardian. This notification may be in the form of a letter provided to the school to be given to the parents or guardian of each child. The notification shall state that the child participated, shall ask the parent or guardian to warn the child not to play with lighters, and shall remind the parent or guardian to keep all lighters and matches, whether child-resistant or not, out of the reach of children. For children who operated the surrogate lighter, the notification shall state that the child was able to operate the child-resistant lighter. For children who do not defeat the child-resistant feature, the notification shall state that, although the child did not defeat the child-resistant feature, the child may be able to do so in the future.

(g) *Data collection and recording.* Except for recording the times required for the children to activate the signal, recording of data should be avoided while the children are trying to operate the lighters, so that the tester's full attention is on the children during the test period. The following data shall be collected and recorded for each child in the 100-child test panel:

(1) Sex (male or female).

(2) Date of birth (month, day, year).

(3) Age (in months, to the nearest month).

(4) The number of the lighter tested by that child.

(5) Date of participation in the test (month, day, year).

(6) Location where the test was given (city, state, country, and the name of the site or a unique number or letter code that identifies the test site).

(7) The name of the tester who conducted the test.

(8) The elapsed time at which the child achieved any operation of the surrogate signal in the first 5-minute test period.

(9) The elapsed time at which the child achieved any operation of the surrogate signal in the second 5-minute test period.

(h) *Evaluation of test results and acceptance criterion.* To determine whether a surrogate lighter resists operation by at least 85 percent of the children, sequential panels of 100 children each, up to a maximum of 2 panels, shall be tested as prescribed below.

(1) If no more than 10 children in the first 100-child test panel successfully operated the surrogate lighter, the lighter represented by the surrogate lighter shall be considered to be resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted. If 11 through 18 children in the first 100-child test panel successfully operate the surrogate lighter, the test results are inconclusive, and the surrogate lighter shall be tested with a second 100-child test panel in accordance with this § 1210.4. If 19 or more of the children in the first 100-child test panel successfully operated the surrogate lighter, the lighter represented by the surrogate shall be considered not resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted.

(2) If additional testing of the surrogate lighter is required by § 1210.4 (h)(1), conduct the test specified by this § 1210.4 using a second 100-child test panel and record the results. If a total of no more than 30 of the children in the combined first and second 100-child test panels successfully operated the surrogate lighter, the lighter represented by the surrogate lighter shall be considered resistant to successful operation by at least 85 percent of the child test panel, and no further testing is performed. If a total of 31 or more children in the combined first and second 100-child test panels successfully operate the surrogate lighter, the lighter represented by the surrogate lighter shall be considered not resistant to successful operation by 85 percent of the child test panel, and no further testing is conducted.

TABLE 1.—EVALUATION OF TEST RESULTS—§ 1210.4(E)

Successful Operations of Surrogate Lighter

Test panel	Cumulative No. of children	No. of successful operations		
		Pass	Continue	Fail
1	100	0–10	11–18	19 or more.
2	200	11–30		31 or more.

§ 1210.5 Findings.

Section 9(f) of the Consumer Product Safety Act (15 U.S.C. 2058(f)) requires the Commission to make findings concerning the following topics and to include the findings in the rule.

(a) *The degree and nature of the risk of injury the rule is designed to eliminate or reduce.* The standard is designed to reduce the risk of death and injury from accidental fires started by children playing with lighters. From 1987 to 1989, an estimated 180 deaths per year resulted from such fires. About 170 of these deaths, plus nearly 1,200 injuries and about $60 million in property damage, resulted from fires started by children under the age of 5. Fire-related injuries include thermal burns—many of high severity—as well as anoxia and other, less serious injuries. The annual cost of such fires to the public is estimated at about $415 million (in 1990 dollars). Fires started by young children (under age 5) are those which the standard would be most effective at reducing.

(b) *The approximate number of consumer products, or types or classes thereof, subject to the rule.* The standard covers certain flame-producing devices, commonly known as lighters, which are primarily intended for use in lighting cigarettes and other smoking materials. Lighters may be gas- or liquid-fueled, mechanical or electric, and of various physical configurations. Over 600 million lighters were sold to consumers

in the U.S. in 1991; over 100 million are estimated to be in use at any given time. Over 95 percent of all lighters sold are pocket-sized disposable butane models; of the remaining 5 percent, most are pocket refillable butane models. A small proportion of refillables is comprised of pocket liquid-fuel models; still smaller proportions are represented by table lighters and by "novelty" lighters, that is, those having the physical appearance of other specific objects. Nearly 600 million pocket butane (nonrefillable) disposables, 10–20 million pocket butane refillables, 5–10 million pocket liquid fuel refillables, and 1–3 million novelty and other lighters were sold to consumers in 1991. The standard covers disposable lighters, including inexpensive butane refillables, and novelty lighters. Roughly 30 million households have at least one lighter; ownership of more than one lighter is typical, especially among smoking households.

(c) *The need of the public for the consumer products subject to the rule, and the probable effect of the rule on the utility, cost, or availability of such products to meet such need.* Consumers use lighters primarily to light smoking materials. Most other lighting needs that could be filled by matches may also be filled by lighters. Disposable butane lighters are, chiefly by virtue of their low price and convenience, the closest available substitutes for matches. Although matches are found in far more households, lighters have steadily replaced matches since the 1960's as the primary light source among American consumers.

(1) The standard generally requires that lighters not be operable by most children under 52 months of age. This would likely be achieved by modifying products to incorporate additional-action switches, levers, or buttons, thereby increasing the difficulty of product activation. Depending on the method of compliance chosen by manufacturers, there could be some adverse effect on the utility of lighters. This may occur to the extent that operation of the products by adult users is made more difficult by the incorporation of child-resistant features. This may lead some consumers to switch to matches, at least temporarily, which could reduce the expected level of safety provided by the standard. In addition, some "novelty" lighters will probably be discontinued, due to the technical difficulty of incorporating child-resistant features or designs. Some loss of utility derived from those products by collectors or other users may result, though many novelty models will probably remain on the market.

(2) The cost of producing lighters subject to the standard is expected to increase due to manufacturers' and importers' expenditures in the areas of research and development, product redesign, tooling and assembly process changes, certification and testing, and other administrative activities. Total per-unit production costs for the various I ighter types may increase by 10–40 percent, with an average of less than 20 percent. Cost increases will likely be passed on to consumers in the form of higher retail prices. Disposable lighters may increase in price by 10–40 cents per unit; prices of other lighters may increase by as much as $5. The estimated average per-unit price increase for all lighters subject to the standard is about 15 cents. The total annual cost of the standard to consumers is estimated at about $95 million. The estimated cost of the standard per life saved is about $1 million; this is within the range of the consensus of research on the statistical value of life.

(3) A wide range of lighter types and models will continue to be available to consumers. As noted above, some models of novelty lighters—all of which account for less than 1 percent of lighters sold—will likely be discontinued; this should not have a significant impact on the overall availability of lighters to consumers.

(d) *Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.* The Commission considered the potential effects on competition and business practices of various aspects of the standard, and, as noted below, incorporated some burden-reducing elements into the proposal. The Commission also encouraged and participated in the development of a draft voluntary standard addressing the risk of child-play fires.

(1) A draft voluntary safety standard was developed by members of an ASTM task group (now a subcommittee) to address much of the risk addressed by the proposed CPSC rule. This draft voluntary standard contained performance requirements similar, but not identical, to those in the CPSC proposal. Development work on the voluntary standard ceased in 1991; industry representatives requested that the Commission issue the draft ASTM provisions in a mandatory rule.

(2) One possible alternative to this mandatory standard would be for the Commission to rely on voluntary conformance to this draft standard to provide safety to consumers. The expected level of conformance to a voluntary standard is uncertain, however; although some of the largest firms may market some child resistant lighters that conform to these requirements, most firms (possibly including some of the largest) probably would not. Even under generous assumptions about the level of voluntary conformance, net benefits to consumers would be substantially lower under this alternative than under the standard. Thus, the Commission finds that reliance on voluntary conformance to the draft ASTM standard would not adequately reduce the unreasonable risk associated with lighters.

(e) *The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk.* The Commission's hazard data and regulatory analysis demonstrate that lighters covered by the standard pose an unreasonable risk of death and injury to consumers. The Commission considered a number of alternatives to address this risk, and believes that the standard strikes the most reasonable balance between risk reduction benefits and potential costs. Further, the amount of time before the standard becomes effective will provide manufacturers and importers of most products adequate time to design, produce, and market safer lighters. Thus, the Commission finds that the standard and its effective date are reasonably necessary to reduce the risk of fire-related death and injury associated with young children playing with lighters.

(f) *The benefits expected from the rule bear a reasonable relationship to its costs.* The standard will substantially reduce the number of fire-related deaths, injuries, and property damage associated with young children playing with lighters. The cost of these accidents, which is estimated to be about $415 million annually, will also be greatly reduced. Estimated annual benefits of the standard are $210-$290 million; estimated annual costs to the public are about $95 million. Expected annual net benefits would therefore be $115-$195 million. Thus, the Commission finds that a reasonable relationship exists between potential benefits and potential costs of the standard.

(g) *The rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.* The Commission

considered and evaluated several alternatives during the development of the standard which might reduce the potential burden on industry (especially small importers) and on consumers. These alternatives involve different performance and test requirements and different definitions determining the scope of coverage among products. Other alternatives generally would be more burdensome to industry and would have higher costs to consumers. Some less burdensome alternatives would have lower risk-reduction benefits to consumers; none has been identified that would have higher expected net benefits than the standard.

(1) The scope of this mandatory standard is limited to disposable lighters and novelty lighters. This is similar but not identical to the scope of a draft voluntary industry standard developed in response to the Commission's advance notice of proposed rulemaking of March 3, 1988 (53 FR 6833). The mandatory standard does not apply to "luxury" lighters (including most higher priced refillable butane and liquid fuel models). This exclusion significantly reduces the potential cost of the standard without significantly affecting potential benefits.

(2) The Commission considered limiting the scope of the standard to exclude some or all novelty lighter models. Though limiting the scope would ease the potential burden of the standard on manufacturers and importers slightly, inherently less safe non-child-resistant lighters resembling articles that may be especially attractive to children would remain on the market, thereby reducing the potential safety benefits to the public. The Commission finds that it would not be in the public interest to exclude novelty lighters.

(3) The Commission considered the potential effect of alternate performance requirements during the development of the standard. A less stringent acceptance criterion of 80 percent (rather than the standard's 85 percent) might slightly reduce costs to industry and consumers. The safety benefits of this alternative, however, would likely be reduced disproportionately to the potential reduction in costs. A higher (90 percent) acceptance criterion was also considered. It is uncertain whether this higher performance level is technically feasible for the industry as a whole; the Commission believes that this more stringent alternative may have significant adverse effects on manufacturing and competition, and may increase costs disproportionate to benefits. The Commission believes that the requirement that complying lighters not be operable by at least 85 percent of children in prescribed tests strikes a reasonable balance between improved safety for a substantial majority of young children and other potential fire victims and the potential for adverse competitive effects and manufacturing disruption.

(4) The Commission believes that the standard should become effective as soon as reasonably possible. The standard will become effective 12 months from its date of publication in the **Federal Register**. The Commission also considered an effective date of 6 months after the date of issuance of the final rule. While most lighters sold in the U.S. could probably be made child-resistant within 6 months, some disruptive effects on the supply of some imported lighters would result; this could have a temporary adverse impact on the competitive positions of some U.S. importers. The 12-month period in the standard would tend to minimize this potential effect, and would allow more time for firms to design, produce, and import complying lighters. The Commission estimates that there would be no significant adverse impact on the overall supply of lighters for the U.S. market.

(h) *The promulgation of the rule is in the public interest.* As required by the CPSA and the Regulatory Flexibility Act, the Commission considered the likely benefits and costs of the standard and various alternatives. While certain alternatives are estimated to have net benefits to consumers, the standard maximizes these net benefits. Thus, the Commission finds that the standard, if promulgated on a final basis, would be in the public interest.

Subpart B—Certification Requirements

§ 1210.11 General.

Section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 1263(a), requires every manufacturer, private labeler, or importer of a product that is subject to a consumer product safety standard and that is distributed in commerce to issue a certificate that such product conforms to the applicable standard and to base that certificate upon a test of each item or upon a reasonable testing program. The purpose of this subpart B of part 1210 is to establish requirements that manufacturers, importers, and private labelers must follow to certify that their products comply with the Safety Standard for Cigarette Lighters. This Subpart B describes the minimum features of a reasonable testing program and includes requirements for labeling, recordkeeping, and reporting pursuant to sections 14, 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2063, 2065(b), 2066(g), and 2076(e).

§ 1210.12 Certificate of compliance.

(a) *General requirements.*

(1) *Manufacturers (including importers).* The manufacturer (including an importer) of any lighter subject to the standard must issue the certificate of compliance required by section 14(a) of the CPSA and this subpart B, based on a reasonable testing program or a test of each product, as required by §§ 1210.13–1210.14 and 1210.16. Manufacturers and importers must also label each lighter subject to the standard as required by paragraph (c) of this section and keep the records and make the reports required by §§ 1210.15 and 1210.17.

(2) *Private labelers.* Because private labelers necessarily obtain their products from a manufacturer or importer that is already required to issue the certificate, private labelers are not required to issue a certificate. However, private labelers must ensure that the lighters are labeled in accordance with paragraph (c) of this section and that any certificate of compliance that is supplied with each shipping unit of lighters in accordance with paragraph (b) of this section is supplied to any distributor or retailer who receives the product from the private labeler.

(3) *Testing on behalf of importers.* If the required testing has been performed by or for a foreign manufacturer of a product, an importer may rely on such tests to support the certificate of compliance, provided that the importer is a resident of the United States or has a resident agent in the United States and the records are in English and the records and the surrogate lighters tested are kept in the United States and can be provided to the Commission within 48 hours (§ 1210.17(a)) or, in the case of production records, can be provided to the Commission within 7 calendar days in accordance with § 1210.17(a) (3). The importer is responsible for ensuringthat the foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly (§§ 1210.14–1210.16), the records provide a reasonable assurance that all lighters imported comply with the standard (§ 1210.13(b)(1)), the records exist in English 1210.17(a)), the importer knows where the required records and lighters are located and that records required to be located in the United States are located there, arrangements have been made so that any records required to be kept in the United States will be provided to the

Commission within 48 hours of a request and any records not kept in the United States will be provided to the Commission within 7 calendar days (§ 1210.17(a)), and the information required by § 1210.17(b) to be provided to the Commission's Division of Regulatory Management has been provided.

(b) *Certificate of compliance.* A certificate of compliance must accompany each shipping unit of the product (for example, a case), or otherwise be furnished to any distributor or retailer to whom the product is sold or delivered by the manufacturer, private labeler, or importer. The certificate shall state:

(1) That the product "complies with the Consumer Product Safety Standard for Cigarette Lighters (16 CFR part 1210)",

(2) The name and address of the manufacturer or importer issuing the certificate or of the private labeler, and

(3) The date(s) of manufacture and, if different from the address in paragraph (c) (2) of this section, the address of the place of manufacture.

(c) *Labeling.* The manufacturer or importer must label each lighter with the following information, which may be in code.

(1) An identification of the period of time, not to exceed 30 days, during which the lighter was manufactured.

(2) An identification of the manufacturer of the lighter, unless the lighter bears a private label. If the lighter bears a private label, it shall bear a code mark or other label which will permit the seller of the lighter to identify the manufacturer to the purchaser upon request.

§ 1210.13 Certification tests.

(a) *General.* As explained in § 1210.11 of this subpart, certificates of compliance required by Section 14(a) of the CPSA must be based on a reasonable testing program.

(b) *Reasonable testing programs.*

(1) *Requirements.* (i) A reasonable testing program for lighters is one that demonstrates with a high degree of assurance that all lighters manufactured for sale or distributed in commerce will meet the requirements of the standard, including the requirements of § 1210.3. Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program should be sufficiently stringent that it will detect any variations in production or performance during the production interval that would cause any lighters to fail to meet the requirements of the standard.

(ii) All reasonable testing programs shall include qualification tests, which must be performed on surrogates of each model of lighter produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard (see § 1210.14) and production tests, which must be performed during appropriate production intervals as long as the product is being manufactured (see § 1210.16).

(iii) Corrective action and/or additional testing must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all lighters manufactured during the applicable production interval will pass the tests of the standard.

(2) *Testing by third parties.* At the option of the manufacturer or importer, some or all of the testing of each lighter or lighter surrogate may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer must ensure that all certification testing has been properly performed with passing results and that all records of such tests are maintained in accordance with § 1210.17 of this subpart.

§ 1210.14 Qualification testing.

(a) *Testing.* Before any manufacturer or importer of lighters distributes lighters in commerce in the United States, surrogate lighters of each model shall be tested in accordance with § 1210.4, to ensure that all such lighters comply with the standard.

(b) *Product modifications.* If any changes are made to a product after initial qualification testing that could affect the ability of the product to meet the requirements of the standard, additional qualification tests must be made on surrogates for the changed product before the changed lighters are distributed in commerce.

(c) *Requalification.* If a manufacturer or importer chooses to requalify a lighter design after it has been in production, this may be done by following the testing procedures at § 1210.4.

§ 1210.15 Specifications.

(a) *Requirement.* Before any lighters that are subject to the standard are distributed in commerce, the manufacturer or importer shall ensure that the surrogate lighters used for qualification testing under § 1210.14 are described in a written product specification. (Section 1210.4(c) requires that six surrogate lighters be used for testing each 100-child panel.)

(b) *Contents of specification.* The product specification shall include the following information:

(1) A complete description of the lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistant features.

(2) A detailed description of all dimensions, force requirements, or other features that could affect the child-resistance of the lighter, including the manufacturer's tolerances for each such dimension or force requirement.

(3) Any further information necessary to adequately describe the lighters and any child-resistant features.

§ 1210.16 Production testing.

(a) *General.* Manufacturers and importers shall test samples of lighters subject to the standard as they are manufactured, to demonstrate that the lighters meet the specifications, required under § 1210.15, of the surrogate that has been shown by qualification testing to meet the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers, private labelers, and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to provide a high degree of assurance that, if the samples selected for testing pass the production tests, all other lighters produced during the interval will meet the standard.

(c) *Test failure.*

(1) *Sale of lighters.* If any test yields results which indicate that any lighters manufactured during the production interval may not meet the standard, production and distribution in commerce of lighters that may not comply with the standard must cease until it is determined that the lighters meet the standard or until corrective action is taken. (It may be necessary to modify the lighters or perform additional tests to ensure that only complying lighters are distributed in commerce. Lighters from other production intervals having test results showing that lighters from that interval comply with the standard could be produced and distributed unless there was some reason to believe that they might not comply with the standard.)

(2) *Corrective actions.* When any production test fails to provide a high degree of assurance that all lighters comply with the standard, corrective action must be taken. Corrective action may include changes in the manufacturing process, the assembly process, the equipment used to manufacture the product, or the product's materials or design. The

corrective action must provide a high degree of assurance that all lighters produced after the corrective action will comply with the standard. If the corrective action changes the product from the surrogate used for qualification testing in a manner that could affect its child-resistance, the lighter must undergo new qualification tests in accordance with § 1210.14.

§ 1210.17 Recordkeeping and reporting.

(a) *Records.* Every manufacturer and importer of lighters subject to the standard shall maintain the following records in English on paper, microfiche, or similar media and make such records available to any designated officer or employee of the Commission in accordance with section 16(b) of the Consumer Product Safety Act, 15 U.S.C. 2065(b). Such records must also be kept in the United States and provided to the Commission within 48 hours of receipt of a request from any employee of the Commission, except as provided in paragraph (a)(3) of this section. Legible copies of original records may be used to comply with these requirements.

(1) Records of qualification testing, including a description of the tests, the dates of the tests, the data required by § 1210.4(d), the actual surrogate lighters tested, and the results of the tests, including video tape records, if any. These records shall be kept for a period of 3 years after the production of the particular model to which such tests relate has ceased. If requalification tests are undertaken in accordance with § 1210.14(c), the original qualification test results may be discarded 3 years after the requalification testing, and the requalification test results and surrogates, and the other information required in this subsection for qualification tests, shall be kept in lieu thereof.

(2) Records of procedures used for production testing required by this subpart B, including a description of the types of tests conducted (in sufficient detail that they may be replicated), the production interval selected, the sampling scheme, and the pass/reject criterion. These records shall be kept for a period of 3 years after production of the lighter has ceased.

(3) Records of production testing, including the test results, the date and location of testing, and records of corrective actions taken, which in turn includes the specific actions taken to improve the design or manufacture or to correct any noncomplying lighter, the date the actions were taken, the test result or failure that triggered the actions, and the additional actions taken to ensure that the corrective action had the intended effect. These records shall be kept for a period of 3 years following the date of testing. Records of production testing results may be kept on paper, microfiche, computer tape, or other retrievable media. Where records are kept on computer tape or other retrievable media, however, the records shall be made available to the Commission on paper copies upon request. A manufacturer or importer of a lighter that is not manufactured in the United States may maintain the production records required by this paragraph (a)(3) outside the United States, but shall make such records available to the Commission in the United States within 1 week of a request from a Commission employee for access to those records under section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(4) Records of specifications required under § 1210.15 shall be kept for a period of 3 years after production of each lighter model has ceased.

(b) *Reporting.* At least 30 days before it first imports or distributes in commerce any model of lighter subject to the standard, every manufacturer and importer must provide a written report to the Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207. Such report shall include:

(1) The name, address, and principal place of business of the manufacturer or importer,

(2) A detailed description of the lighter model and the child-resistant feature(s) used in that model,

(3) A description of the qualification testing, including a description of the surrogate lighters tested, the specification of the surrogate lighter required by § 1210.15, a summary of the results of all such tests, the dates the tests were performed, the location(s) of such tests, and the identity of the organization that conducted the tests,

(4) An identification of the place or places that the lighters were or will be manufactured,

(5) The location(s) where the records required to be maintained by paragraph (a) above are kept, and

(6) A prototype or production unit of that lighter model.

(c) *Confidentiality.* Persons who believe that any information required to be submitted or made available to the Commission is trade secret or otherwise confidential shall request that the information be considered exempt from disclosure by the Commission, in accordance with 16 CFR 1015.18. Requests for confidentiality of records provided to the Commission will be handled in accordance with section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), the Freedom of Information Act as amended, 5 U.S.C. 552, and the Commission's regulations under that act, 16 CFR part 1015.

§ 1210.18 Refusal of importation

(a) *For noncompliance with reporting and recordkeeping requirements.* The Commission has determined that compliance with the recordkeeping and reporting requirements of this subpart is necessary to ensure that lighters comply with this part 1210. Therefore, pursuant to section 17(g) of the CPSA, 15 U.S.C. 2066(g), the Commission may refuse to permit importation of any lighters with respect to which the manufacturer or importer has not complied with the recordkeeping and reporting requirements of this subpart. Since the records are required to demonstrate that production lighters comply with the specifications for the surrogate, the Commission may refuse importation of lighters if production lighters do not comply with the specifications required by this subpart or if any other recordkeeping or reporting requirement in this part is violated.

(b) *For noncompliance with this standard and for lack of a certification certificate.* As provided in section 17(a) of the CPSA, 15 U.S.C. 2066(a), products subject to this standard shall be refused admission into the customs territory of the United States if, among other reasons, the product fails to comply with this standard or is not accompanied by the certificate required by this standard.

Subpart C—Stockpiling

§ 1210.20 Stockpiling.

(a) *Definition.* "Stockpiling" means to manufacture or import a product between the date of issuance of a consumer product safety rule and its effective date at a rate which is significantly greater than the rate at which such product was produced or imported during a base period.

(b) *Base Period.* For purposes of this rule, "base period" means, at the option of the manufacturer or importer, any period of 365 consecutive days during the 5-year period prior to the date of promulgation of the final rule.

(c) *Prohibited act.* Manufacturers and importers of disposable and novelty cigarette lighters shall not manufacture or import lighters that do not comply with the requirements of this part between the date that this part is issued and the date that it becomes effective at a rate that is greater than the rate of production or importation during the base period plus 20 percent of that rate.

Dated: August 7, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(Note: The following list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Denton, D., Petition on Disposable Lighters and materials submitted in support of petition, April 29, 1985.
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15. Letter from T. Scanlon, Chairman, CPSC, to J. Florio, Chairman, Subcommittee on Commerce, Consumer Protection and Competitiveness, U.S. House of Representatives, re: Commission action on child-resistant cigarette lighters, November 18, 1987.
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28. ANPR Comment CA 5–88–10, M. Forys, Scripto Tokai, Inc., April 28, 1988.
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35. ANPR Comment CA 5–88–9, BIC Corporation, Received May 2, 1988.
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112. Letter from D. Baker, General Counsel for the Lighter Association, Inc., to Chairman J. Jones-Smith, re: revised definitions for disposable lighters, November 30, 1990.

113. Memorandum from E. Perry, ES, to J. Hoebel, "Patents for Child Resistant Cigarette Lighters, December 18, 1990.

114. Letter from J. Ogle, Vice President, Wilkinson Sword, Inc., to Chairman J. Jones-Smith, CPSC, "Draft Notice of Proposed Rulemaking for Child-Resistant Lighters,", January 16, 1991.

115. Letter from D. Baker, Lighter Association Inc., to Chairman J. Jones-Smith,

CPSC, re: effective date of a final rule, January 16, 1991.

116. Memorandum from B. Jacobson, Project Manager, HS, to the Commission, "Bimonthly Status Report for the Cigarette Lighter Project," January 17, 1991.

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118. Letter from J. Ogle, Vice President, Wilkinson Sword, Inc., to Chairman J. Jones-Smith, CPSC, re: "Draft Notice of Proposed Rulemaking for Child-Resistant Lighters," February 8, 1991.

119. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, re: "Lighters: Proposed Effective Date," February 8, 1991.

120. Memorandum from D. Schmeltzer, EXCE, to B. Jacobson, Project Manager, HS, re: "Request for sign-off on extension of effective date of cigarette lighter rule," February 14, 1991.

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122. Letter from M. Fise, Product Safety Director, Consumer Federation of America, to Chairman J. Jones-Smith, CPSC, re: the staff-proposed notice of proposed rulemaking on cigarette lighters, March 1, 1991.

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132. Statement of Commissioner A. Graham, re: Cigarette Lighters, May 2, 1991.

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135. Letter from D. Baker, General Counsel, Lighter Association Inc., to Chairman J. Jones-Smith, CPSC, re: May 2, 1991 statements on child-resistant lighter proceeding, May 30, 1991.

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138. Letter from D. Burgh, President & CEO, General Cigar, Co., Inc., to E. Peterson, Executive Director, CPSC, re: information on child-resistancy of the DJeep lighter, June 28, 1991.

139. Memorandum from B. Jacobson, Project Manager, HS, to the Commission, "Bimonthly Status Report for Cigarette Lighter Project," June 28, 1991.

140. Letter from M. Paquette, Mechanical and Electrical Hazards Division, Consumer and Corporate Affairs Canada, to J. Hoebel, CPSC, "Study on the Performance of Lighters Available on the Canadian Market for 1990–91," July 11, 1991.

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145. Letter from S. Cirami, to B. Jacobson, Project Manager, HS, re: specification and drawings of a recently filed patent application for child-resistant lighters, October 3, 1991.

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147. Log of Meeting of ASTM Task Group F15.02, Arlington, Virginia, October 17, 1991.

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149. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, "Definition of Products Covered by Proposed Rule on Lighters," December 23, 1991.

150. National Poison Prevention Week Editor's Fact Sheet, March 1992.

151. Memorandum to E. Perry from F. Vitaliti, "Sample Number P598–0729, Force Measurements of a Child Resistant Cigarette Lighter," March 13, 1992.

152. Memorandum to E. Perry from F. Vitaliti, "Sample Number P598–0730, Force Measurements of a Child Resistant Cigarette Lighter," March 18, 1992.

153. Letter from G. Whalen, Scientific Project Officer, Consumer and Corporate Affairs Canada, to B. Jacobson, CPSC, re: protocol for determining the child-resistance of cigarette lighters, March 20, 1992.

154. Memorandum from D. Ray, ECPA, to B. Jacobson, HSPS, "Initial Regulatory Flexibility Analysis of Proposed Rule on Lighters," March 27, 1992.

155. Memorandum from R. Newman, EP to B. Jacobson, HS, "Statistical Analysis of Non-Child-Resistant Roll and Press Cigarette Lighter Data Including Toronto Retest," April 8, 1992.

156. Log of meeting of ASTM Subcommittee F15.02, Safety Standards for Lighters, April 10, 1992.

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158. Memorandum from R. Newman, EP, to B. Jacobson, HS, "Sequential Testing of Child-Resistant Lighters," May 1, 1991.

159. Letter from F. Levinger, President, Colibri Corporation, to D. Ray, CPSC, re: definition of disposable lighters, May 4, 1992.

160. Memorandum from B. Jacobson, HS, to A. Ulsamer, HS, "Protocol for Testing Child-Resistant Lighters—Discussion of Outstanding Issues," May 8, 1992.

161. Letter from J. Bouchand, Ministere de L'Economie et des Finances, Paris, France, to E. Peterson, Executive Director, CPSC, re: concern about Commission action on child-resistant cigarette lighters, May 19, 1992.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926

[Docket No. H–71]

RIN 1218–AA98

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; notice of informal public hearing; notice of additional issues.

SUMMARY: This notice supplements the Notice of Informal Public Hearing on Occupational Exposure to Methylene Chloride (MC) in the **Federal Register** (57 FR 24438, June 9, 1992) by advising the public of the Occupational Safety and Health Administration's consultation with the Advisory Committee on Construction Safety and Health, reporting the recommendations of that Committee, and extending the deadlines for filing of notice of intention to appear at the informal public hearings, written testimony and

comments on issues regarding the construction industry.

DATES: All informal public hearings will begin at 9:30 a.m. on the first day of the hearing and at 9 a.m. on each succeeding day. The two informal public hearings are scheduled to begin on the following dates:

Washington, DC: September 16, 1992.
San Francisco, CA: October 14, 1992.

Notices of intention to appear at the informal public hearings to testify regarding the construction-related issues raised in this supplemental notice must be postmarked by September 8, 1992. Notice of intention to appear at the informal public hearings to testify on all other issues must be postmarked by August 24, 1992.

Testimony and all evidence which will be introduced into the hearing record regarding the construction-related issues raised in this supplemental notice must be postmarked by September 8, 1992 for the Washington, DC hearing and by September 22, 1992 for the San Francisco, CA hearing. Testimony and all evidence to be introduced into the hearing record regarding all other issues must be postmarked by August 24, 1992 for the Washington, DC hearing and by September 22, 1992 for the San Francisco, CA hearing.

Comments on the construction-related issues raised in this supplemental notice must be postmarked by September 22, 1992. Comments on all other issues must be postmarked by August 24, 1992.

ADDRESSES: Notices of intention to appear at the hearing and testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8615.

Comments are to be submitted in quadruplicate to: The Docket Office, Docket No. H–71, room N–2634, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone No. (202) 523–7894.

Comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 523–5046, provided that the original and three copies of the comment are sent to the Docket Officer thereafter.

The locations of the informal public hearings are as follows:

Washington, DC: The Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

San Francisco, CA: The Coit Room, Holiday Inn, Financial District, 750 Kearny St., San Francisco, CA 94108 (415) 433–6600.

FOR FURTHER INFORMATION CONTACT:

Hearings: Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8615.

Proposal: Mr. James F. Foster, Office of Public Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8151.

SUPPLEMENTARY INFORMATION: On November 7, 1991, OSHA proposed to amend its existing regulation for employee exposure to Methylene Chloride (MC), so that the permissible exposure limits (PELs) would appropriately reflect the available animal and human data. The Agency proposed to reduce the permissible 8-hour time-weighted average (TWA) exposure from 500 parts per million (ppm) to 25 ppm. In addition, OSHA proposed to delete the existing ceiling limit concentration of 1000 ppm and to reduce the short-term exposure limit (STEL) from 2,000 ppm (measured over 5 minutes in any 2 hours as a maximum peak concentration) to 125 ppm, measured as a 15-minute TWA.

The proposal also set requirements for exposure control, personal protective equipment, employee exposure monitoring, training, medical surveillance, hazard communication, regulated areas, emergency procedures and recordkeeping. In order to minimize the compliance burdens of employers whose employees have consistently low exposures to MC, the Agency has proposed an "action level" of 12.5 ppm, measured as an 8-hour TWA. The Notice of Proposed Rulemaking (NPRM) presented 48 issues, including one issue specifically addressing methylene chloride use and exposure in the construction industry, through which the Agency sought to elicit information and comments.

At the time the NPRM was published, the Agency had not yet consulted with the Advisory Committee on Construction Safety and Health (ACCSH) regarding the application of the proposed rule to the construction industry, because the Committee's members, whose terms expired in June 1990, had not yet been reappointed or replaced. OSHA stated (56 FR 57115–16) that the NPRM for MC provides the necessary rationale for regulatory action and sets out the requirements needed to protect employees in all industries, including construction, from the health hazards associated with occupational exposure to MC.

On May 4, 1992, the ACCSH was reconstituted (57 FR 19139). On May 19, 1992, the Advisory Committee convened and established a work group to gather information for consideration by the full Committee at its next meeting, scheduled for July 28, 1992. In preparing its report, the methylene chloride work group addressed questions regarding MC use and exposure in the construction industry which OSHA had presented to the Committee. In addition, the work group generated issues and information that went beyond the scope of OSHA's questions.

On June 9, 1992, OSHA published a Notice of Informal Public Hearing (57 FR 24438) which scheduled hearings and raised 16 issues (including Issue 10, which focused on the construction industry, repeating the questions presented to the ACCSH) regarding which the Agency sought testimony, with supporting information. The hearing notice also reopened the comment period for the NPRM. In addition, the hearing notice stated that OSHA would publish a supplemental hearing notice once the Agency had completed its consultation with the Advisory Committee, so that the Committee's recommendations could be addressed in testimony at the hearings or in comments.

On July 28, 1992, the Advisory Committee received the report of the methylene chloride work group. The Committee approved the work group report and formally presented the report to OSHA as the compilation of its recommendations regarding OSHA's proposal to regulate occupational exposure to MC in the construction industry. OSHA has placed the work group report in the Docket for this rulemaking (Ex. 21–69), so it is available for public inspection and copying.

This notice summarizes the Committee's recommendations and extends the deadlines for filing notice of intention to appear at the informal public hearings, written testimony and comments on issues regarding MC in the construction industry. The limited extension of deadlines for input regarding construction issues provides additional time for interested members of the public to review the recommendations set forth by the Advisory Committee on Construction Safety and Health and to prepare comments or testimony on these issues.

The Agency has reviewed the Committee's recommendations and has determined that those recommendations

call for no revisions to the proposed regulatory text as regards the construction industry. The Committee's recommendations, and any public input regarding those recommendations, will be further considered in drafting the final rule for occupational exposure to MC. The responses to the eight questions presented to the Advisory Committee (repeated in Issue 10 of the hearing notice) are presented in Item 1 through Item 8, below. In addition, recommendations that addressed matters not raised by the eight questions are presented in Item 9, below.

The Agency solicits testimony and comments, with supporting information, regarding the issues raised by the recommendations of the Advisory Committee, as discussed below.

1. Exposed Employee Population

Regarding the inquiry about construction worker exposures to MC and specific trades where exposure is significant, the Committee suggested several populations of construction workers which OSHA should investigate in order to identify potentially exposed workers. In particular, the ACCSH discussed MC exposure among lead paint abatement workers, painters, hazardous waste workers, workers in confined spaces, workers in trades where adhesives are used, mechanics, electricians, plumbers, carpenters and employees of small independent contractors. Data was submitted on the total number of workers for several of these populations, although data describing the number of workers exposed to methylene chloride in these situations was not available.

2. Duration of Employee Exposure

Regarding the inquiry about the amount of time employees are exposed to MC, the Committee noted that there are only limited data available. It was suggested that OSHA review the National Occupational Exposure Survey data and a study of solvent exposures among painters in Alaska.

3. Control of Employee Exposure

Regarding the inquiry about the engineering controls, work practices and personal protective equipment used to protect employees from MC exposure, the Advisory Committee stated that there are few engineering controls currently in use to protect against exposure to MC in the construction industry. The Committee suggested that OSHA review the asbestos rulemaking record for information on engineering control issues. Also, the report stated that work practices should be reviewed on a trade-by-trade basis to determine where changes should be made. In addition, the ACCSH noted there is a widely held view that it is impractical to use supplied-air respirators to control MC exposure at construction sites.

4. Construction Industry-Specific Concerns

In response to OSHA's request for information and recommendations regarding any special problems which might be encountered by the construction industry in complying with the proposed requirements for medical surveillance and exposure monitoring, the Committee recommended that OSHA consider requiring that the originators of proposals specify that provisions for exposure monitoring and medical surveillance be included in all bids received, so that all contractors would be required to address and cost these items in their submitted bids.

5. Medical Surveillance and Exposure Monitoring

Regarding the inquiry about potential problems in complying with the proposed medical surveillance and exposure monitoring requirements, the Committee discussed different approaches for medical surveillance programs, including surveillance administered at the national level, either by trade unions or by a governmental body (e.g. OSHA or NIOSH).

The ACCSH noted that exposure monitoring may be difficult because exposure levels vary so widely in the construction industry, adding that air monitoring should not be tied to medical surveillance. The Committee also observed that, while virtually all exposure monitoring at construction work sites is performed under contract by outside personnel, there is a shortage of industrial hygienists to monitor construction industry exposures. In addition, concern was expressed regarding the cost of the industrial hygiene resources needed to perform the exposure monitoring required by the proposed rule.

The Committee suggested that OSHA consider triggering specific requirements of the rule (such as exposure monitoring and medical surveillance) by frequency of use in addition to, or in place of, the exposure level triggers currently proposed. In addition, the ACCSH suggested increased emphasis on product labeling, establishment of regulated areas as a partial replacement of some of the monitoring requirements, and the feasibility of using real-time monitoring instead of periodic monitoring to detect exposures to MC.

6. Substitute Products and Processes

With regard to the feasibility of substitutes for methylene chloride in construction industry applications, the Committee submitted the proceedings from the International Conference on Reducing Risk in Paint Stripping, sponsored by the Environmental Protection Agency and held in Washington, DC on February 12–13, 1991. It was suggested that manufacturers issue alerts to let employers known of suitable substitutes for MC. OSHA notes that this document is already available for inspection and copying in the Docket for this rulemaking (Ex. 21–76).

7. Use of Respiratory Protection

Regarding the inquiry about respirator usage in the construction industry, the Committee replied "Currently, construction workers do not wear respirators to control for exposure to MC." The NIOSH recommendations concerning respirators (Ex. 19–46) were discussed. Because NIOSH considers MC to be a carcinogen, that Agency does not recommend respirators to control exposure to MC. The Committee stated that, if a respirator were to be used, the most effective type would be a pressure demand, supplied-air respirators with an auxiliary self-contained breathing apparatus. Air-purifying respirators were not recommended for reducing exposure to MC because of poor breakthrough qualities and lack of end-of-service-life-indicators.

8. Impact of Proposed 25 ppm PEL

Regarding the inquiry about any anticipated changes in construction worksites resulting from efforts to comply with a 25 ppm 8-hour TWA PEL, the Advisory Committee stated that there would not be a great deal of difference between the compliance strategy used for 25 ppm and that used for 50 ppm. The ACCSH also stated that OSHA should consider how employers would monitor compliance with the short-term exposure limits. In addition, the Committee suggested that OSHA also consider the frequency of MC use in triggering specific provisions of the proposed rule.

9. Additional Recommendations

A. Availability of Training and MSDSs

The Advisory Committee suggested that OSHA add a discussion to the preamble of the final rule and a non-mandatory appendix concerning lead abatement and MC issues. The Committee suggested that the non-

mandatory appendix include information about training, such as non-mandatory "minimum" curriculum recommendations. The ACCSH noted that training employers/employees through the use of videos is considered to be superior to on-the-job training with safety coordinators because of the amount of knowledge required, and because safety supervisors may not have sufficient time or information to provide thorough training. The Committee also noted that videos are more effective than written materials, as they are accessible to employees who are illiterate, and that bilingual videos or other training material should be available for non-English speaking workers. The ACCSH also noted that safety information videos may be borrowed from the NIOSH library, for the cost of postage, that the Laborers Union has videos and safety cards for dissemination, and that an EPA pilot program on disk is also available.

The Advisory Committee also stated that, in addition to training, workers need material safety data sheets (MSDS) that are understandable. The Committee noted that a non-mandatory appendix in the final rule could be the appropriate place to provide an example of how to simplify the information in material safety data sheets.

B. Emergency Procedures

The ACCSH noted that it may also be useful to discuss in the non-mandatory appendix information about emergency procedures for spills and related occurrences.

C. Responsibility for Compliance

The ACCSH recommended that OSHA consider assigning responsibility for safety and health responsibility at multi-employer worksites. In particular, the Committee suggested that the Agency consider designating the worksite owner, or "host" employer as being responsible for overall worksite safety.

D. Information in Non-mandatory Appendix.

The Advisory Committee suggested that the Agency add information in a non-mandatory appendix to address how employers should handle MC in construction. In particular, the Committee suggested that OSHA provide (1) examples of specification language for contracts which require specific compliance with OSHA standards on jobs which require use of MC; (2) examples of air monitoring programs; and (3) examples of medical surveillance or preventative medicine programs. The ACCSH noted that surveillance and preventative medicine issues may be of interest because of heightened awareness in public health toward prevention.

E. Significance of Risk

The Advisory Committee stated that it was inappropriate for OSHA to set one excess death for each thousand workers as the threshold for finding that a substance addressed in a section 6(b)(5) proceeding presented a significant risk of material harm to exposed workers. The Committee stated that the risk of premature death among workers exposed to MC at the levels that would be allowed based on the "1 in a 1000" approach is unacceptable.

OSHA is interested in receiving comments and testimony concerning the recommendations of the ACCSH. Persons interested in submitting comments or in participating in the hearing should refer to the notice of proposed rulemaking on Occupational Exposure to Methylene Chloride (56 FR 57036) and the Notice of Hearing (57 FR 24488) for the text of the proposed standard and a more thorough discussion of issues.

Public Participation—Notice of Hearing

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by this notice will be provided at an informal public hearing scheduled to begin at 9:30 a.m. on September 16, 1992 in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210 and at 9:30 a.m. on October 14, 1992 in the Coit Room, Holiday Inn, Financial District, 750 Kearny St., San Francisco, CA 94108.

Notice of Intention to Appear

All persons desiring to participate at the hearing regarding the construction-related issues raised in this supplemental notice must file a notice of intention to appear postmarked on or before September 8, 1992. All persons desiring to participate at the hearing regarding any other issues must file a notice of intention to appear postmarked on or before August 24, 1992. All notices of intention to appear must be submitted in quadruplicate, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket H–71, room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523–8615. The notice of intention to appear also may be transmitted by facsimile to (202) 523–5046, provided the original and 3 copies of the notice are sent to the above address thereafter.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, room N–2625, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523–7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;
(2) The capacity in which the person will appear;
(3) The approximate amount of time requested for the presentation;
(4) The specific issues that will be addressed;
(5) A statement of the position that will be taken with respect to each issue addressed; and
(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of his testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. For the Washington, DC hearing, materials dealing with the construction-related issues raised in this supplemental notice must be postmarked by September 8, 1992 and materials relating to all other issues must be postmarked by August 24, 1992. For the San Francisco hearing, materials relating to all issues must be postmarked by September 22, 1992. These materials will be available for inspection and copying at the Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appeal. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper Notices of Intention to Appear at the hearing will be entitled to ask

questions and otherwise participate fully in the proceeding.

Any participant who requires audiovisual equipment during the oral testimony, must submit a request for such equipment in the Notice of Intent to Appear, specifying the type of equipment needed.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m., on September 16, 1992 in Washington, DC. An additional hearing will convene at 9:30 a.m., on October 14, 1992 in San Francisco. At those times, any procedural matters relating to the proceeding will be resolved. The informal nature of the rulemaking hearings to be held is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15 (a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, it is clear that the proceeding shall remain informal and legislative in type. The intent, in essence, is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearings will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

(1) To regulate the course of the proceedings;
(2) To dispose of procedural requests, objections and comparable matters;
(3) To confine the presentation to the matters pertinent to the issues raised;
(4) To regulate the conduct of those present at the hearing by appropriate means;
(5) In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and
(6) In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views, and arguments from any person who participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Written Comments

Interested persons are invited to submit written data, views, and arguments with respect to this proposed standard. Any comments regarding the construction-related issues raised in this supplemental notice must be postmarked on or before September 22, 1992. Comments on all other issues must be postmarked on or before August 24, 1992. All comments must be submitted in quadruplicate to the Docket Officer, Docket No. H–71, room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Comments limited to 10 pages or less also may be transmitted by facsimile to (202) 523–5046, provided the original and three copies are sent to the Docket Office thereafter. Written submissions must clearly identify the proposed provisions or the hearing notice issues which are addressed and the position taken with respect to those provisions or issues.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

Authority and Signature

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC on this 12th day of August 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92–19580 Filed 8–12–92; 4:46 pm]

BILLING CODE 4510–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[MB–42–P]

RIN 0938–AF13

Medicaid Program; Qualified Family Members

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: Under the Aid to Families with Dependent Children (AFDC) program, States may elect to limit the number of months of benefits provided to families who are eligible by reason of the unemployment of the principal wage earner. This proposed rule would ensure that States which have exercised this option continue to provide Medicaid to qualified family members beyond the time when AFDC ends solely because of the State's election of a time limit. The proposed rule conforms the regulations with sections 1902(a)(10)(A)(i)(V) and 1905(m) of the Social Security Act, as added by section 401(d) of the Family Support Act of 1988.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 16, 1992.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–42–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to: Office of Information and Regulatory Affairs, Attn: Laura Oliven, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

In commenting, please refer to file code MB–43–P. Comments received timely will be available for public

inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

FOR FURTHER INFORMATION CONTACT: Richard Coyne, (410) 966–4458.

SUPPLEMENTARY INFORMATION:

Background

In general, under the Medicaid program, title XIX of the Social Security Act (the Act), individuals who are eligible for certain public assistance programs, e.g., Aid to Families with Dependent Children (AFDC) under Part A of title IV of the Act and Supplemental Security Income (SSI) under title XVI of the Act, are eligible for medical assistance as members of a categorically needy group. Similarly, unless expressly provided for by statute, loss of eligibility for AFDC or SSI benefits may result in termination of Medicaid eligibility as categorically needy. (Title XIX of the Act requires coverage of certain categorical groups other than cash assistance recipients. In addition, Title XIX provides States with various options to provide Medicaid coverage to additional categorical groups. Hence, cessation of receipt of AFDC or SSI need not necessarily result in an individual's loss of Medicaid.) This proposed rule concerns the extension of Medicaid eligibility to certain individuals whose AFDC has been terminated because a State elects to impose a time limit on AFDC cash benefits available to a family with an unemployed principal wage earner.

Under the AFDC program, States provide assistance to certain families that meet the eligibility criteria. In accordance with section 407 of the Act, until October 1, 1990, States had the option to provide AFDC assistance to two-parent families when the principal wage earner was unemployed. These families were eligible for Medicaid by virtue of their eligibility for AFDC. Effective October 1, 1990, under section 401 of the Family Support Act of 1988 (Pub. L. 100–485), all States are required to furnish AFDC to these families. However, States which had not previously chosen to provide benefits to these families are permitted to deny AFDC cash payments to a family which had received AFDC on the basis of the unemployment of the principal wage earner in at least six months out of the preceding 12 months. The October 1, 1990 date does not apply to Guam, Puerto Rico, American Samoa, and the Virgin Islands where the effective date is October 1, 1992.

Section 401(d) of the Family Support Act of 1988 also added new sections 1902(a)(10)(A)(i)(V) and 1905(m) to title XIX, which define "qualified family member" and require State plans to make Medicaid available to qualified family members. Section 1905(m)(1) of the Act defines a "qualified family member" as an individual (other than a qualified pregnant woman or child, as defined in section 1905(n) of the Act) who is a member of a family that would be receiving aid under the State plan under Part A of title IV pursuant to section 407 if the State had not exercised its option under section 407(b)(2)(B)(i) of the Act to limit the number of months it will pay AFDC to a family with an unemployed principal wage earner.

Section 401(d) of the Family Support Act of 1988 also contains a sunset provision, which provides that the requirement for States to provide Medicaid to qualified family members terminates effective October 1, 1998. The statute states that no individual may be a qualified family member for any period after September 30, 1998.

Proposed Revisions

We are proposing to revise 42 CFR part 435, Subpart B, Mandatory Coverage of the Categorically Needy and Special Groups, by adding a new § 435.119. This section would provide for mandatory categorical eligibility for qualified family members and define a qualified family member.

We would redesignate existing § 435.119 under undesignated subheading, Mandatory Coverage of Adoption Assistance and Foster Care Children as new § 435.145 under the same undesignated subheading.

Section 1905(m) of the Act defines a qualified family member as a member of a family that would be receiving AFDC cash benefits based on the unemployment of the principal wage earner had the State not chosen to place a time limit on those benefits, but excludes from the definition those family members who would be eligible as qualified pregnant women or qualified children as defined in section 1905(n) of the Act. Under the authority of section 1902(a)(19) of the Act, which allows for safeguards to ensure that Medicaid care and services will be provided in a manner consistent with simplicity of administration and the best interests of recipients, and the Secretary's authority to publish rules and regulations necessary to the efficient administration of the programs under the Social Security Act, 42 U.S.C. section 1302, we propose to modify the definition. We would define qualified family member as any member of a family that would be receiving AFDC cash benefits based on the unemployment of the principal wage earner had the State not chosen to place a time limit on those benefits, whether or not those individuals would be eligible as qualified pregnant women or qualified children.

Under our proposed definition, a pregnant woman or child could receive coverage as either a qualified pregnant woman or child or as a qualified family member. Qualified pregnant women, qualified children and qualified family members are all mandatory eligibility groups and all are eligible for the same scope of services under the State Medicaid plan (section 1902(a)(10)(B)). Because the statutory exception is a distinction without a difference, we believe that this interpretation is clearer, simpler, and therefore, easier to administer. We do not believe that any individual will be harmed by the proposed definition; however, we specifically invite public comment on whether this is so.

In addition, under existing §§ 435.916 and 435.930, States are required to redetermine eligibility when circumstances change and must continue to provide Medicaid until the recipient is found ineligible. We have interpreted this requirement for redetermination, pursuant to the decision in *Stenson* v. *Blum*, 476 F. Supp 1331 (S.D., N.Y. 1979) *affirmed* 628F. 2nd 1345, *cert. denied*, 499 U.S. 885 (1980), to mean determining whether the individual is eligible on any basis. Therefore, when an individual ceases to meet the definition of qualified family member, the State is required to determine if the individual is eligible under any other group before terminating his or her Medicaid eligibility. Pregnant women and children who have been considered qualified family members but who also meet the eligibility requirements as qualified pregnant women or qualified children (as well as low-income pregnant women, infants and children and medically needy individuals) will be discovered at this time.

We note that the parenthetical provision of § 435.116(a)(1) and the provisions of § 435.116(a)(2) are not effective while section 401(d) of Pub. L. 100–485 is in effect; i.e., until October 1, 1998. These two provisions refer to situations in which the State's AFDC plan does not include an AFDC unemployed parent program and, until October 1, 1998, all States will be

required to include such a program in their AFDC State plan. The pregnant women to whom these provisions would apply are eligible under the mandatory coverage provisions of § 435.116(a)(3) and Pub. L. 100–485.

We propose to revise the title of § 435.116 to read, Qualified pregnant women and children who are not qualified family members.

We propose to amend 42 CFR part 436, which contains the eligibility provisions applicable to Guam, Puerto Rico, and the Virgin Islands. Those geographical areas are not subject to the SSI provisions, but rather participate in the cash programs (Title X, Aid to the Blind; Title XIV, Aid to the Permanently and Totally Disabled; Title XVI, Aid to the Aged, Blind or Disabled). We propose to make corresponding changes to § 436.120 to revise the title to read, Qualified pregnant women and children who are not qualified family members. We would also add a new § 436.121 entitled, Qualified family members, which would contain provisions essentially identical to those in new § 435.119 with the following exception. The statute provides a later effective date for implementation of these provisions in American Samoa, Guam, Puerto Rico and the Virgin Islands. Consequently, the provisions of §§ 435.119 (for American Samoa) and 436.121 would be effective on October 1, 1992.

Paperwork Reduction Act

Sections 435.119 and 436.121 of this proposed rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504, et seq.). The information collection requirements concern State plan amendments, which must be completed by States. Reporting burden for the collection of information in §§ 435.119 and 436.121 are estimated to be one hour per State plan amendment. A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the **"ADDRESS"** section of this preamble.

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule;" that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if this rule has a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that has fewer than 50 beds and is located outside a Metropolitan Statistical Area.

We estimate the Medicaid program expenditures as a result of conforming these regulations to the statute to be as follows:

FY	Cost (dollars in millions)
Federal	
1992	$75
1993	90
1994	100
States	
1992	57
1993	68
1994	75

Although we anticipate increased costs to Federal and State governments as indicated above, we believe that these costs will have a beneficial effect on society. If anything, we expect increased health care coverage for families as a result of the implementation of these regulations.

For the most part, costs as a result of these proposed regulations would be incurred regardless of the promulgation of these regulations. The provisions of this rule merely conform the regulations to the legislative provisions of sections 1902(a)(10)(A)(i)(V) and 1905(m) of the Act, as added by section 401(d) of the Family Support Act of 1988. Therefore, we have not prepared an analysis under E.O. 12291.

We have determined, and the Secretary certifies, that these proposed regulations would not have significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of effects on small rural hospitals.

Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of the rule.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs-health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

A. 42 CFR part 435 would be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The title of § 435.116 is revised to read as follows:

§ 435.116 Qualified pregnant women and children who are not qualified family members.

* * * * *

§ 435.119 [Redesignated as § 435.145]

3. Section 435.119 is redesignated as new § 435.145 under undesignated subheading, Mandatory Coverage of Adoption Assistance and Foster Care Children.

4. New § 435.119 is added under a new undesignated subheading, Mandatory Coverage of Qualified Family Members to read as follows:

Mandatory Coverage of Qualified Family Members

§ 435.119 Qualified family members.

(a) *Definition.* A *qualified family member* is any member of a family, including pregnant women and children eligible for Medicaid under § 435.116 of this subpart, who would be receiving AFDC cash benefits on the basis of the unemployment of the principal wage earner under section 407 of the Act had the State not chosen to place time limits on those benefits as permitted under section 407(b)(2)(B)(i) of the Act.

(b) *State plan requirement.* The State plan must provide that the State makes Medicaid available to any individual who meets the definition of *qualified family member* through September 30, 1998.

(c) *Effective date.* This regulation is effective on October 1, 1992 for American Samoa.

B. 42 CFR part 436 would be amended as set forth below:

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The title of § 436.120 is revised to read as follows:

§ 436.120 Qualified pregnant women and children who are not qualified family members.

* * * * *

3. A new § 436.121 is added to read as follows:

§ 436.121 Qualified family members.

(a) *Definition.* A *qualified family member* is any member of a family, including pregnant women and children eligible for Medicaid under § 436.120 of this subpart, who would be receiving AFDC cash benefits on the basis of the unemployment of the principal wage earner under section 407 of the Act had the State not chosen to place time limits on those benefits as permitted under section 407(b)(2)(B)(i) of the Act.

(b) *State plan requirement.* The State plan must provide that the State makes Medicaid available to any individual who meets the definition of *qualified family member* through September 30, 1998.

(c) *Effective date.* The provisions contained in this section are effective on October 1, 1992.

(Catalog of Federal Domestic Assistance Program No. 93.778—Medical Assistance Program)

Note: This document received in the Office of the Federal Register on August 5, 1992.

Dated: July 31, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: November 1, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–18965 Filed 8–14–92; 8:45 am]

BILLING CODE 4120–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–163, RM–8037]

Radio Broadcasting Services; Clinton, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Clinton Radio Co. proposing the substitution of Channel 237C3 for Channel 237A and modification of the license for Station KDKD (FM) to specify operation on the higher class channel at Clinton, Missouri. The coordinates for Channel 237C3 are 38–24–32 and 93–46–50.

DATES: Comments must be filed on or before October 1, 1992, and reply comments on or before October 16, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Timothy K. Brady, P.O. Box 986, Brentwood, Tennessee 37027–0986.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–163, adopted July 21, 1992, and released August 11, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990, NW., suite 640, Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–19476 Filed 8–14–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–175; RM–7720]

Radio Broadcasting Services; Ravenswood and Williamstown, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the petition for rule making filed by MediaCom, Inc. for the reallotment of Channel 291A from Ravenswood to Williamstown, West Virginia. See 56 FR 30375, July 2, 1991. We find that there are minimal public interest benefits that would result from reallotting a full-time service from a relatively isolated community to a smaller community when that action would result in a loss of reception service to a substantial number of persons. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–175, adopted July 22, 1992, and released August 11, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–19475 Filed 8–14–92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1207 and 1249

[Ex Parte No. MC–206]

Revision to Accounting and Reporting Requirements for Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served July 27, 1992 (57 FR 33314, July 28, 1992), the Commission sought public comment by August 26, 1992, on a proposal to adopt new accounting and reporting rules. The American Trucking Association (ATA) requests a 45-day extension until October 12, 1992, and The International Brotherhood of Teamsters (IBT) requests a 30-day extension until September 25, 1992, of the comment due date. ATA states additional time is needed so members can carefully consider and discuss this proposal at various meetings being held during the next two months. IBT indicates additional time is needed to respond in detail to various elements contained in the proposed action and to consult with individuals who currently are unavailable due to vacation plans. In view of the Commission's interest in expediting review of deregulatory proposals a 30-day extension will be permitted.

DATES: Comments are due on September 25, 1992.

ADDRESSES: Send an original and 15 copies, if possible, of comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lee: (202) 927–5660 [TDD for the hearing impaired: (202) 927–5721].

Decided: August 12, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19531 Filed 8–14–92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 6 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) for review by the Secretary of Commerce (Secretary). Written comments on Amendment 6, which includes a regulatory impact review (RIR), initial regulatory flexibility analyses (IRFA), and environmental assessment (EA), are requested from the public.

DATES: Written comments must be received on or before October 6, 1992.

ADDRESSES: Copies of Amendment 6 may be obtained from the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, suite 331, Tampa, FL 33609, or from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, suite 306, Charleston, SC 29407–4699.

Comments should be sent to Mark F. Godcharles, NMFS, Southeast Regional Office, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

Amendment 6 proposes to: (1) Revise the problems and objectives statements of the FMP; (2) specify periods for rebuilding overfished stocks; (3) change the required frequency of stock assessments from annual to biennial; (4) add to the management measures that may be implemented or modified by the framework procedure; (5) provide for the establishment of separate subgroups of the Gulf migratory group of king mackeral, divided at the Florida/Alabama boundary, when the assessment panel is able to provide ranges of acceptable biological catch for the subgroups; (6) allow the earned income requirement for a commercial vessel permit for king or Spanish mackeral to be met in any one of the 3 years preceding the permit application; (7) change the fishing year for recreational bag limits to the calendar year; (8) remove the provisions for reducing recreational bag limit to zero during a fishing year; (9) increase the minimum size limit for king mackerel to 20 inches (50.8 cm) fork length; and (10) implement commercial vessel trip limits for Atlantic migratory group Spanish mackerel.

Proposed regulations to implement Amendment 6 are scheduled for publication within 15 days.

Dated: August 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19523 Filed 8–12–92; 12:55 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 159
Monday, August 17, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Alternative Agricultural Research and Commercialization (AARC) Center; Alternative Agricultural Research and Commercialization Grant and Cooperative Agreement Program; Request for Pre-Proposals

Program Description

Purpose

The Alternative Agricultural Research and Commercialization (AARC) Center is requesting pre-proposals under the AARC Grant and Cooperative Agreement Program (Program) to assist emerging industrial products/processes involving the use of agricultural or forestry materials. The authority for the Program is contained in section 1660 of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, 7 U.S.C. 5904. The Program is administered by the AARC Center, which is an independent entity within the U.S. Department of Agriculture. The objectives of the AARC Center are:

- To search for new nonfood, nonfeed products that may be produced from agricultural commodities and for processes to produce such products.
- To conduct product and co-product/process development and demonstration projects, as well as provide commercialization assistance for industrial products from agricultural and forestry materials.
- To encourage cooperative development and marketing efforts among manufacturers, private and government laboratories, universities, and financiers to assist in bridging the gap between research results and marketable, competitive products and processes.
- To collect and disseminate information about commercialization projects that use agricultural or forestry materials and industrial products derived therefrom.

Under the Program, the AARC Center will award competitive grants and cooperative agreements to support research and development of new industrial products or processes derived from agricultural or forestry commodities. The AARC Center will use the pre-proposals submitted to determine the products/processes that may have the most potential for commercialization, the degree to which the proposed project may meet the AARC Center's mission, and, for those projects to be considered further, to point out areas of such projects that may need to be strengthened.

Available Funding

Currently, approximately $4.0 million is available from Federal sources. However, the AARC Board also may choose to use Fiscal Year 1993 funds when such funds become available. It is anticipated that these additional funds will be approximately $7.0 million.

Some level of matching of funds is required with the amount of such matching to be determined after pre-proposals are reviewed, but in no case will funds provided by the AARC Center under the Program exceed two-thirds of the total cost of the project. A preference may be given to those projects for which the ratio of Center funds to non-Center funds would be the lowest or those projects with the lowest effective overhead and administrative costs.

Eligibility

Pre-proposals are invited from any private firm, individual, public or private educational or research institution or organization, Federal agency, cooperative, or nonprofit organization. Cooperative projects involving any of the above are encouraged.

Program Emphasis

As determined by the AARC Board from a series of public hearings held around the country, each pre-proposal should focus on products/processes from the following material categories: Starches/Carbohydrates, Fats and Oils, Fibers, Forest Materials, Animal Products, Other Plant Materials used as pharmaceuticals, fine chemicals, encapsulation agents, rubber, etc.

The AARC Center's primary interest, in this request for pre-proposals, is in providing assistance to technology development projects that will commercialize new non-food, non-feed uses from new and existing agricultural and forestry materials. Special emphasis will be given to those pre-proposals whose products are closest to commercialization. Pre-proposals that request funds for research may be considered; however, such requests must include an overall development plan that contains potential markets, development costs, and industry participation.

Pre-Proposal Preparation

Pre-proposal Format

Applicants should submit a brief pre-proposal, not more than four pages in length that includes the following:

- *Cover Sheet.* List the name, address, telephone and FAX numbers of project leader and names of other partners.
- *Brief Project Description.* Explain the product/process characteristics, the management structure, stage of commercialization and when commercial impact is expected.
- *Benefits of the Project.* Explain the potential impact on the market (return on investment and crop utilization potential), environment, and rural communities.
- *Capabilities of Participants.* Describe the relationship among participants (if more than one entity is involved) and their capabilities for bringing the product/process to market.
- *Budget.* Show all funding sources and separate equipment, personnel costs, and supplies as line items. Include current financial statements on any existing partnership/corporate structure.
- *Other.* Explain any assistance required (other than funding) to accelerate commercialization.

Pre-proposal Submission

The original and three copies of the pre-proposal must be received by 3 p.m. on October 30, 1992. One of the following addresses should be used, as applicable:

Regular U.S. mail	Overnight delivery
USDA AARC Center, 14th & Independence Avenue SW., 342 Aerospace Center, Washington, DC 20250–2200	USDA AARC Center, 901 D Street SW., 342 Aerospace Center, Washington, DC 20250–2200

Evaluation Criteria

The AARC Board seeks projects that will have market impact on new and existing agricultural products and will favor projects that:

- Are market-driven;
- Have private sector involvement;
- Incorporate sharing of resources and risks (cash and expertise), and
- Have a high probability for commercial success.

The statute indicates that the AARC Board may use the following criteria when the grants or cooperative agreements are made under the Program:

- The prospect of developing technologies that could make it possible to use or modify existing agricultural commodities to provide an economically viable quantity of new nonfood, nonfeed products;
- The potential market size of the new nonfood, nonfeed product, the likely time period needed to bring the product into the stream of commerce for general use, and the likely availability of the agricultural commodity used to produce the product;
- The potential for job creation in an economically distressed rural area;
- The anticipated State or local participation;
- The anticipated financial participation of private entities;
- The likely impact on reducing Federal crop subsidies and other Federal agricultural assistance program costs;
- The unavailability of adequate funding from other sources;
- The likely positive impact on resource conservation and the environment;
- The likely positive effect of helping family-sized farmers and rural communities near the affected agricultural and forested areas.

Pre-proposals will receive both a business and a technical review. After review, the AARC Board will seek full proposals on projects that best address the evaluation criteria outlined above. Such proposals will be reviewed on a competitive basis by a peer review panel established by the AARC Board, with the AARC Board making the final award decisions.

Other Considerations

With respect to projects carried out with private researchers or commercial companies, information submitted by applicants incident thereto will be kept confidential, except with the approval of the person providing the information or in a judicial or administrative proceeding in which such information is subject to protective order.

Intellectual property rights, such as patents and licenses, shall remain with the owner unless other arrangements are negotiated beforehand. Inventions made under an award under this Program shall be owned by the awardee in accordance with 35 U.S.C. 200–204 and 37 CFR part 401.

No grant or cooperative agreement may be entered into under the Program for the acquisition or construction of a building or facility.

Entities that submit a pre-proposal must file a declaration of compliance with 31 U.S.C. 1352 regarding limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions either prior to pre-proposal submission or simultaneously. The required certification form may be obtained by contacting either person listed above.

Due to limited funds, all projects meriting support may not be funded by the AARC Center.

Inquiries

Questions regarding the AARC Center or the pre-proposal process should be directed to:

Beverly Gillot, 202–401–4860

or

Patricia Dunn, 202–401–4640.

Done at Washington, DC, on August 12, 1992.

Paul O'Connell,

Acting Director, Alternative Agricultural Research and Commercialization Center.

[FR Doc. 92–19508 Filed 8–14–92; 8:45 am]

BILLING CODE 3410–22–M

Agriculture Marketing Service

Meetings for the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463), as amended, the Agricultural Marketing Service announces forthcoming meetings of the National Organic Standards Board (NOSB) Committees.

DATES: September 10–11, 1992.

ADDRESSES: The Processing and Labeling Committee of the National Organic Standards Board (NOSB) will meet at the Sheraton Inner Harbor, 300 South Charles St., Baltimore, MD on September 10, from 9 a.m. to 5 p.m. The Livestock Committee of the NOSB will meet at the Sheraton Inner Harbor on Friday, September 11, from 9 a.m. to 3 p.m. A session to receive public input will be held in the Baltimore Convention Center Inner Harbor on Friday, September 11, 1992, from 5 p.m. to 9 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, National Organic Standards Board, Room 4006–South Building, P.O. Box 96456, Washington, DC 20090–6465. Telephone: (202) 720–2704.

SUPPLEMENTARY INFORMATION: Section 2119 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Fact Act), Pub. L. No. 101–624, (7 U.S.C. section 6518, requires establishment of a National Organic Standards Board. The purpose of the Board is to assist in the development of standards for substances to be used in organic production and handling and to advise the Secretary on any other aspects of the implementation of Title XXI of the Fact Act. The NOSB met for the first time in Washington, DC, in March and formed six committees to work on various aspects of the Program, The committees are: Crop Standards, Livestock Standards, Processing, Labeling and Packaging, National Materials List, International Issues, and Accreditation.

The purpose of this meeting of the Processing, Labeling, and Packaging Committee is to work on draft documents and position papers for presentation to the full Board at a future meeting, and to receive input on processing and labeling standards issues from individuals and organizations. Issues to be discussed include: An organic handling plan; audit trail; material inputs; and packaging issues. The Livestock Committee is seeking input on: materials needed for livestock and poultry health; livestock farm plan; livestock feed; and audit trail. Both committees are interested in consumer and environmental concerns as they relate to the organic program.

A final agenda will be available on August 21, 1992, which will include detailed agendas for each committee. Persons requesting copies should contact Mrs. Fox at the above address or telephone number.

The meeting will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to express public comment on any organic issues should forward the request to Dr. Harold S. Ricker at the above address or FAXED to (202) 690–0330 by September 3, 1992, in order to be scheduled. The Committees will schedule time for public input on Friday, September 11, beginning at 5 p.m. and continuing until

9 p.m. The first two hours are designated for processing input and the last two hours for general comments and concerns. Each individual or organization will be allocated 10 minutes for orally presenting the key issues of concern, and should provide copies of written material, elaborating on those issues for the committees.

Dated: August 12, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-19526 Filed 8-14-92; 8:45 am]

BILLING CODE 3410-02-M

Cooperative State Research Service

Agricultural Science and Technology Review Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: Agricultural Science and Technology Review Board (hereafter referred to as the Review Board).

Date: August 31, 1992.

Time: 8 a.m.-4 p.m.

Place: One Washington Circle Hotel, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: The purposes of the meeting are to: Review the missions and responsibilities of the Review Board; Determine activity priorities; Agree on approaches to address responsibilities; Establish agenda for next meeting; Elect Chair and other officers.

Contact Person for Agenda and More Information: Dr. Mark R. Bailey, Executive Secretary, Joint Council on Food and Agricultural Sciences, room 3M12, Annex Building, U.S. Department of Agriculture, Washington, DC 20250-2200; Telephone (202) 401-4662.

Done in Washington, DC, this 5th day of August 1992.

Clare I. Harris,

Associate Administrator.

[FR Doc. 92-19492 Filed 8-14-92; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Hot Springs Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal any decision related to the harvest and restoration of lands affected by drought-induced timber mortality covered under the Holey Dome and Sycamore Insect Salvage Environmental Assessments on the Hot Springs Ranger District. The environmental assessments are being prepared in response to continuing timber mortality on the Hot Springs Ranger District. The unusual mortality is being caused by drought and related insect and disease infestations.

The proposed Holey Dome and Sycamore Insect Salvage Environmental Assessments include the area from the Northern District boundary south to Dunlap Meadow and the Western District boundary east to a line running north to south at Sentinel Peak. All areas are within the General Forest Zone as delineated by the Sequoia National Forest Land and Resource Management Plan.

There are currently higher than normal levels of tree mortality occurring throughout the Sequoia National Forest as a result of six consecutive years of below normal precipitation. This drought condition has caused a high degree of stress within the trees which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles and white pine blister rust. The Hot Springs District is experiencing drought-related mortality well above average for the District and Forest.

Trees subject to insect attack act as hosts for producing new broods of insects. The commercial value of lumber recovered from infested trees declines rapidly as the wood deteriorates. Prompt removal of affected timber helps to reduce the growth rates of insect populations and minimize value and volume loss in salvaged timber. Excessive numbers of dead trees can lead to heavy fuel concentrations, making wildfire control difficult as witnessed two summers ago when the Stormy Complex fires burned approximately 24,000 acres on the District.

In the Holey Dome Insect Salvage project area, salvage sales are being proposed to harvest approximately four million board feet (MMBF) on approximately 12,725 acres using helicopter and ground-based logging systems. No new specified road construction will be proposed for the salvage operations. Existing roads and landings will be used. Approximately 2 miles of temporary roads are being proposed to access the salvage timber.

In the Sycamore Insect Salvage project area, salvage sales are being proposed to harvest approximately one million board feet on approximately 6,300 acres. Both ground-based logging systems and helicopter will be used in this timber sale. All harvesting will occur from existing roads.

Salvage logging, especially helicopter logging, is costly when compared to logging green timber sales because of the typically low volumes per acre removed and the scattered nature of the dead trees. To be economically feasible, timber value must be high enough to compensate for the higher logging costs. If dead timber is not removed promptly, the decline in value and volume cause by deterioration will prevent economical removal by both ground-based and helicopter logging systems. For this reason, it is necessary to remove dead and dying timber as soon as possible if an environmental analysis supports the decision to do so.

Pursuant to 36 CFR 217.4(a)(11), I have determined that good cause exists to exempt from appeal any decision relating to the harvest and restoration of lands following drought-induced timber mortality which is covered under the Holey Dome and Sycamore Insect Salvage Environmental Assessments on the Hot Springs Ranger District of the Sequoia National Forest. The environmental documents being prepared will address the effects of the proposed actions on the environment, will document public involvement and will address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective August 17, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705-2648, or Sandra H. Key, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257, (209) 784-1500.

ADDITIONAL INFORMATION: The environmental analyses for these proposals will be documented in the Holey Dome Insect Salvage and Sycamore Insect Salvage Environmental Assessments. Pursuant to 40 CFR 1501.7, scoping was initiated on the Holey Dome Insect Salvage on November 7, 1991. Scoping for the Sycamore Insect Salvage was begun May 14, 1992. Scoping was conducted by the Hot Springs District Small Sales Officer and Timber Management Officer in order to

determine some of the issues to be addressed in the environmental analyses. The District is expected to complete the environmental documentation for the proposed projects at the end of August or early September. The environmental assessments and related maps will be available for public review at the Hot Springs Ranger Station, Rt. 4, Box 548 California, Hot Springs, CA 93207 and at the Supervisor's Office, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257.

The catastrophic damage presently occurring in the central portion of the Hot Springs District covers approximately 70,000 acres. Within this area approximately 19,000 acres and five million board feet (MMBF) is presently being proposed for salvage. The value to the Forest Service of 5 MMBF salvage volume is estimated between $1.7 and $2.9 million dollars. This does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply and construction industries. Tulare County will share in 25% of the revenue collected from these timber sales. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention, and fuels reduction.

Salvage projects are not expected to adversely affect snag dependent wildlife species. Snags will be left in numbers to meet or exceed the guidelines stated in the Sequoia National Forest Land and Resources Management Plan and Mediated Land Management Plan 1990 Settlement Agreement, and the Regional guidelines of three to four snags per acre in suitable spotted owl habitat. There will be no salvage harvesting in designated California Spotted Owl Habitat Areas (SOHA's). The giant sequoia groves will not be harvested and each grove will have a 1,000 foot no cut buffer around them. Any threatened or endangered plants or animals located within the project areas will be protected. The nesting and roosting areas for the California Condor (*Gymnogyps Californianus*) will be excluded from cutting. Four "sensitive" species, spotted owl (*Strix occidentalis occidentalis*), northern goshawk (*Accipiter gentilis*), fisher (*Martes pennanti*), and pine marten (*Martes americana*) have been found within the project area in the past. Any threatened or endangered wildlife species which is identified during salvage preparation or operations will be protected using current contract provisions. Surveys for sensitive plants and cultural resources will be completed prior to approval of the Environmental Assessments. All sensitive plants or cultural resources will be protected using current contract provisions. Sequoia National Forest Riparian Standards and Guidelines will be applied in the areas that will be harvested.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources during this field season. These delays would result in volume and value losses, and increase the chances of wildfires occurring due to the large additional quantity of standing and down fuels.

Dated: August 11, 1992.

Dale N. Bosworth,

Reviewing Officer, Deputy Regional Forester.

[FR Doc. 92-19496 Filed 8-14-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oregon Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on August 26, 1992, at the Red Lion-Lloyd Center, 1000 NE. Multnomah, Portland, Oregon 97232. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Jeannette Y. Pai or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 11, 1992.

Carol-Lee Hurley,

Chief, Regional Coordination Unit.

[FR Doc. 92-19466 Filed 8-12-92; 12:04 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

[Docket No. 920790-2190]

Notice of Plan to end the Premium Service of the National Trade Data Bank (NTDB) and Request for Comments

AGENCY: Economics and Statistics Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The "Premium Service" of the National Trade Data Bank (NTDB) has been available to subscribers since August 23, 1990; however, it has never had many subscribers and since January 1, 1992, only one subscriber has used the service. The net cost of this service is unnecessary and the Department of Commerce wishes to save money by ending the Premium Service on September 30, 1992. Magnetic tapes containing NTDB information will continue to be sold as requested.

DATES: Comments must be submitted on or before September 16, 1992.

ADDRESSES: Written comments should be addressed to: John E. Cremeans, Director, Office of Business Analysis, Economics and Statistics Administration, room H4878, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John E. Cremeans, (202) 377-1405.

SUPPLEMENTARY INFORMATION: The Premium Service of the NTDB resides on the National Institutes of Health (NIH) computer. Data may be downloaded via modem or copied on magnetic tape and shipped to the subscriber. Subscribers must deposit $300.00 with the National Technical Information Service and are charged $45.00 per hour of connect time with NIH computer and $125.00 per reel of magnetic tape ordered. Access is to all NTDB information programs in bulk; that is, subscribers may order all the data in a given information program or all the changes to an information program since the last session, but the software does not permit users to select individual data items, e.g., subscribers may obtain all market research reports or all new market research reports, but subscribers may not search for or obtain a specific market research report via this service. Since its initiation, all data transfer has been via magnetic tape; that

is, no user has requested download of bulk data via modem.

The Premium Service was announced via **Federal Register** notices on August 18, 1989, and May 1, 1990, and other channels. It was the first means to obtain NTDB data, and received significant attention from potential users in its early months of availability, but the maximum number of subscribers since August 1990 was seven and only one user has accessed the Premium Service since January 1992. The net cost to the Department of operating the Premium Service is unnecessary.

In contrast, the "Standard Service" of the NTDB, which consists of the monthly production of a Compact Disc—Read Only Memory (CD–ROM), has been very successful, and the NTDB data users that formerly subscribed to the Premium Service have become Standard Service subscribers. The NTDB CD–ROMs are distributed at no charge to almost 700 Federal Depository Libraries throughout the country, and 807 discs were sold to private and government users in June 1992. If the present rate of growth continues, the NTDB will be selling approximately 1,000 discs per month by October 1992. Users of NTDB data have overwhelmingly chosen the Standard Service and CD–ROMs over the Premium Service.

Private information vendors and state and local governments obtain NTDB information via the Standard Service and make the data available to their subscribers. Some of these redistributors make the data available on line.

The Department plans to end the Premium Service on September 30, 1992. After that date, NTDB data on magnetic tape will be supplied to users requesting that medium from a less costly Departmental microcomputer system. Thus no present user will be denied access or have their service reduced.

Discs currently provided through the Premium Service are formatted in a highly structured manner due to the database management system required to operate the Premium Service. Tapes issued directly from the Office of Business Analysis (OBA) after September 30, 1992, will be restructured in an easier to use flat file formation similar to the format available when extracting data directly from the CD–ROM. Copies of the planned format are available from OBA.

This plan was presented to the Interagency Trade Data Advisory Committee (ITDAC) on June 15, 1992, and its advice sought and carefully considered.

Susanne H. Howard,

Associate Under Secretary, Economics and Statistics Administration.

[FR Doc. 92–19500 Filed 8–14–92; 8:45 am]

BILLING CODE 3510–EA–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a plastic MM tray to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 16, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On October 11, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (56 FR 51375) of the proposed addition of the tray to the Procurement List. Comments were received from one of the current contractors for the MM tray. The contractor objected to the proposed addition as a further reduction of the Postal Service market for products which constitute the major portion of its business. The contractor's reference was to a previous action by the Committee to add a portion of the Government requirement for another Postal Service tray and lid manufactured by his firm to the Procurement List. The contractor also advised that the firm was experiencing considerable difficulty and had laid off employees as a result of a Postal Service specification change for this tray. The contractor indicated that the addition of this tray to the Committee's Procurement List would further aggravate the firm's problems and reduce its production efficiencies. Such impacts would, according to the contractor, force additional layoffs in an economically depressed area without comparable job opportunities. The contractor also noted that the Postal Service specification change would prevent it from retaining some business by serving as a supplier to nonprofit agencies authorized by the Committee to make the trays.

The Committee has considered the contractor's comments, including the potential impact of its previous actions. The Committee also took into account the Postal Service's tentative plans to purchase these trays in a larger size, which has not previously been procured and would not be affected by the is action. In both its previous action and this case, the Committee has chosen to place only a portion of the Postal Service requirements for the trays on the Procurement List, thereby providing the contractor with continued opportunities to bid on the items involved. This approach was taken to assure that the contractor which submitted comments would not be severely adversely impacted by the Committee's actions.

For the current addition, the Committee has also reduced the size of the portion of the Postal Service requirement being added to the Procurement List from that announced in the notice of proposed rulemaking to eliminate the part currently under contract to this contractor. While the Committee did not consider this action to be absolutely necessary to avoid having severe adverse impact on this contractor, it acted to reduce the impact to the lowest level which would still create a meaningful amount of employment for blind persons.

The Committee has concluded that the possible loss of employment by the current contractor's work force as a result of this Committee action is offset by the job and training opportunities that will be generated for persons who are blind, who have a very high unemployment rate. The adverse impact of a loss of production efficiency, use of equipment, and business opportunities as a supplier was caused by the Postal Service specification change and did not result from the Committee's addition of the trays to the Procurement List. Given the fact that the contractor will continue to have the opportunity to compete for a sizeable part of the Postal Service's requirements for the two trays on the Procurement list and the larger trays expected to be procured during FY 1993, if it can meet the specifications, the Committee has concluded that the proposed addition of the MM tray to the Procurement List would not constitute sever adverse impact on this contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity

listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement list: Plastic MM Tray, P.S. Item No. 3925, (U.S. Postal Service requirements for Mail Transport Equipment (MTE) areas 5, 7 and 10).

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–19533 Filed 8–14–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List plastic bags to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 16, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 17, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 13715) of the proposed addition of these bags to the Procurement List. Comments were received from two of the three current contractors for these plastic bags and from two members of Congress and the central nonprofit agency which the Committee has appointed to represent the nonprofit agency employing blind persons which will produce the bags under the Committee's program. One of the members of Congress asked that the Committee take into account the concerns of one of the commenting contractors, which the Committee has done. The other member of Congress asked the Committee to work with a plastic trash bag manufacturing company owned by an Indian tribe to assure that it is not harmed by the Committee's action. The company, which is not a current contractor for the bags being added to the Procurement List, will be afforded an opportunity to compete as a supplier of plastic film to the nonprofit agency which will produce the bags. The central nonprofit agency urged the Committee to add the bags to the Procurement List to create jobs for blind persons who have lost their jobs because of reduced sales caused by Government downsizing and inventory reduction.

One of the contractors noted that it was a small minority owned business that employs over 100 minority individuals or persons with disabilities. It claimed that it had afforded the Government considerable savings over a previous supplier because of improved production techniques and lower profit margins. It objected to the proposed addition to the Procurement List because it does not want to lose a contract it worked so hard to gain.

While the Committee regrets depriving this contractor of the potential to compete for future contracts, it believes that the creation of employment for currently unemployed blind persons offsets the loss, particularly as the contractor has not indicated that any of its employees will lose their jobs as a direct result of the Committee's action. In addition, as explained below, this contractor will have one more opportunity to compete for a contract for these bags, and will also in the future be given the opportunity to compete to supply plastic film to the nonprofit agency which will produce the bags. Finally, the contractor's current bag contract represents just under 10 percent of its expected 1992 sales. The Committee does not consider a sales loss of this size to constitute severe adverse impact when, as in this case, there are no other significant adverse factors.

The other contractor noted that it has been a supplier of these bags to the Government since 1987 and that loss of these sales would have a significant effect on its total sales and would require layoff of at least twenty employees. It claimed that loss of these sales would eliminate revenue needed to cover capital costs incurred to meet Government requirements for the bags. It also noted that the nonprofit agency proposed to produce the bags would lose no current jobs if the bags are not added to the Procurement List and would be able to compete with other firms to produce the bags for the Government.

The Committee believes that the sales impact figures presented by the contractor are higher than warranted by the current procurement outlook. The figures reflect the unusually high sales caused by Operation Desert Storm or are annualizations of five months of the current year. The Committee has relied on other figures which indicate that, because future Government demand for the bags will be less than that reflected in the contractor's figures, the impact of losing these sales would be less and, even considering the contractor's history as a supplier of these bags, would not constitute severe adverse impact on the contractor, which is the applicable standard in the currently effective Committee regulations.

In regard to the contractor's claim that it would lose the opportunity to amortize its capital expenditures if the bags were added to the Procurement List, it should be noted that the contractor has been supplying the bags to the Government since 1987 and should have amortized some of its costs by now. Moreover, the contractor will continue to have the opportunity to compete to supply these bags to the Government throughout most if not all of 1993 and possibly through January 1994, during which time plant and equipment costs could continue to be amortized. This opportunity will exist because the nonprofit agency which will produce the bags will assume supply responsibility on a partial basis and build up to a full responsibility by the end of January 1994. Also, although the plastic bags purchased by GSA are of a higher quality than those sold commercially, the machines used by the contractor to produce the GSA bags can be employed to make the similar, but lower quality commercial bags. Thus, the contractor has the potential to continue to recoup its capital costs through sales to the commercial market.

Although the Committee agrees that no existing jobs would be eliminated if this action were not taken, it does not agree that the nonprofit agency designated to produce the bags and the

blind people it serves would not be harmed. The agency itself would be frustrated in fulfilling its mission of generating employment opportunities for blind persons, particularly those residing in rural communities. More importantly, blind people who are currently unemployed or underemployed would lose out on the opportunity to obtain well-paying, full-time jobs and training. Because of the extremely high unemployment rate among blind people, the Committee believes that the creation of employment for these individuals offsets the loss of employment for the contractor's employees, whose chances of securing other employment are much greater than those of blind persons. In this case, the Committee noted that the disparity in employment opportunities is even greater because the contractor's plants are located in metropolitan areas, while more than half of the blind individuals who will be employed live in rural areas with fewer job possibilities.

Congress created the Committee's program as a mandatory procurement source program in order to make it possible for nonprofit agencies to provide stable employment opportunities for persons with severe disabilities. Thus, it is implicit in the Committee's mission that these agencies should not be expected to participate in Federal projects—particularly those requiring substantial capital investment—unless they have a guarantee that contracts will be forthcoming on a recurring basis. This guarantee is provided by the Committee's program. To argue, as the contractor does, that the nonprofit agency could have an opportunity to supply the bags without their being added to the Procurement List is inconsistent with Congress's conclusion regarding the need for the Committee's program. Consequently, the Committee does not regard this argument as one that justifies a decision not to add the bags to the Procurement List.

The contractor noted that several suppliers provide general purpose plastic bags to the Government. It claimed that this diversity of suppliers affords the Government a "safety net" in the event that one or more contractors fail to meet their contract requirements. It questioned the wisdom of having only one supplier for the bags, as an act of God or man could disrupt the supply from a single facility.

The Committee concurs that placing all the requirements with a single facility would be risky. However, in this case, the designated nonprofit agency will produce the bags at two facilities, thereby providing a "safety net." This approach is acceptable to the Federal procuring agency.

The contractor stated that it began supplying the bags to the Government after the Government had experienced severe difficulties with quality, delivery, and price of bags from other suppliers and that it had eliminated these problems for the Government. In noted that the designated nonprofit agency does not have any experience producing these plastic bags. It further stated that it produces the bags from raw plastic pellets, unlike the designated nonprofit agency which will produce them from plastic film. It argued that its approach, which gives the contractor control over the entire manufacturing process, is superior to a two-step process which introduces additional opportunities for quality problems.

The nonprofit agency has been successfully producing other similar plastic bags for the Government for some time. It produces these bags from plastic film rather than raw plastic pellets. The nonprofit agency will conduct tests to determine that the film meets Government specifications before it produces the bags. It will also conduct a series of quality tests on the finished products. The Federal procuring agency has indicated that this arrangement meets its quality requirements.

The contractor stated that production of the bags by the designated nonprofit agency rather than by competitive contractors will have "inevitable adverse effects on pricing." It claimed that, because the three plastic bags to be added to the Procurement List represent nearly all of its Government plastic bag sales, its price to the Government for other plastic bags would have to increase if the three are added to the Procurement List because it would lose the volume discounts from its suppliers which it currently enjoys.

The Committee is required by law, 41 U.S.C. 47(b), to set a fair market price for each item on the Procurement List. The fair market price for the bags was established using competitive bidding data from the most recent procurement, which is the usual procedure for commodities which have previously been procured competitively. The producing nonprofit agency will be required to accept this price when its sells the bags to the Government under the Committee's program. The nonprofit agency—and the central nonprofit agency which the Committee has designated to represent the nonprofit agency—have independently assured the Committee that the nonprofit agency will be able to produce the bags at this price. If the loss of a volume discount requires a contractor to set its price for other related items at a higher level on future bids, the competitive system will ensure that the Government receives a fair price by awarding the contract to another bidder.

The contractor questioned the correctness of the Committee's assertion in its notice of proposed rulemaking that the addition of these bags to the Procurement List would authorize small entities to produce the bags and would not have a significant impact on a substantial number of small entities. It identified five small businesses which it claimed would be significantly affected by the Committee's action. Two of these businesses are the commenting contractors which, as discussed in the preceding paragraphs, the Committee has determined will not be severely impacted by the addition of the bags to the Procurement List. The other three, which are not current contractors for the bags, will lose only the opportunity to bid on future contracts for the bags. The Committee does not consider loss of this opportunity alone to constitute significant impact. Moreover, any impact on these five companies would be mitigated by the opportunity they would have to compete to supply plastic film to the nonprofit agency which will produce the bags, in accordance with a Committee regulation which encourages nonprofit agencies participating in the Committee's program to subcontract with small businesses.

Contrary to the contractor's assertion, the addition of these bags to the Procurement List will authorize small entities to produce the bags. The designated nonprofit agency is a small entity. Addition of the bags to the Procurement List may also authorize other small entities (i.e., other nonprofit agencies employing people with severe disabilities) to produce the bags in the future if Government needs require additional productive capacity.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Bag, Plastic
8105–01–195–8730
8105–01–183–9768
8105–01–183–9769.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–19534 Filed 8–14–92; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF ENERGY

Chicago Field Office, NREL Area Office; Noncompetitive Financial Assistance Award Green Pricing Pilot Project

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR part 600, is announcing its intention to amend Grant number DE–FG02–91CH10488 with the American Council for an Energy Efficient Economy (ACEEE). The amendment will allow for implementation of a program designed to provide energy consumers with information regarding trade-offs in the use of renewable power sources. The program is entitled "Green Pricing Pilot Project".

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Boulevard, Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist, Paul K. Kearns, Contracting Officer.

SUPPLEMENTARY INFORMATION: DOE intends to award a grand amendment to ACEEE for a Green Pricing Project. ACEEE has been conducting a Federally sponsored program entitled "The Regulatory Assistance Program" (RAP) as a result of the Clean Air Act Amendments of 1990. This program is intended to provide intensive, on-site training and educational assistance to state public utility commissions on all aspects of least-cost integrated utility planning. The Green Pricing Project will facilitate development and implementation of pilot Green Pricing programs in at least four states.

The Green Pricing Program proposal was reviewed in accordance with DOE Financial Assistance Rules, 10 CFR 600, and the activity was determined to be worthy of funding as a continuation of work currently funded by DOE. ACEEE is considered to be an integral part of the program to promote technology development and use of renewable energy. DOE has determined that ACEEE has an exclusive capability to perform the Green Pricing Pilot Project partially due to the fact that they were the originators of the Green Pricing concept. The total value of the project is $100,000 and the performance period is 21 months.

Issued in Chicago, Illinois, on August 5, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92–19418 Filed 8–14–92; 8:45 am]

BILLING CODE 6450–01–M

Support of Cannon Low-NO_x Digester System

AGENCY: Department of Energy.

ACTION: Justification for support of an unsolicited proposal (cooperative agreement) award.

SUMMARY: The Department of Energy (DOE), announces that pursuant to 10 CFR 600.14(e), it is intending to award a cooperative agreement from an Unsolicited Proposal to Southern California Gas Company, for the "Support of the Cannon Low-NO_x Digester System."

SCOPE: The objective of this project is to reduce NO_x emissions to no more than 40 ppmv, as required at the California site of the available host boiler. The researcher, (Cannon Boiler Works, Inc.) has achieved a level of 2 ppm in pilot-scale testing. The participant intends to provide economic data on continuous operation of the commercial-scale boiler (17 MBtu/h), and to develop data leading to design improvements. The plans include a nine-month period of monitored, on-line operation.

The facility available for this project is a gas-fired boiler at a dairy company (Alta-Dena). It will provide an acceptable scale of operation, a low cost to install the modifications and the economy of using regular plant labor for the long-duration test. The owner is required to abate the current NO_x emissions to comply with the regulations of the South Coast Air Quality Management District. The particular appeal of the Cannon technology is its potential to yield very high performance at an economically competitive cost.

In accordance with the criteria presented under 10 CFR 600.14(e) criteria (i) and (ii), the Southern California Gas Company has been selected as the cooperative agreement recipient. The unique, overall merit of the proposal is the concept of converting the relatively water insoluble NO_x emissions to a form which can be removed in a water spray chamber.

The remediation of acid rain precursors is encompassed by DOE's mission; therefore, the support and investigation of this novel technology will be directly beneficial to PETC's Advanced Combustion Technology Program. The public purpose to be served is the potential for reducing atmospheric pollution by the identification and development of effective, economical technology.

The project period of the cooperative agreement is for 1 year. The estimated value for the project period is $356,251. This funding will be shared by the following: DOE (25%), Southern California Gas Company (16.7%), Cannon Boiler Works (33.2%), Alta-Dena Dairy (16.7%), and South Coast Air Quality Management District (8.4%).

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Maryann Lundgren, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Telephone: AC (412) 892–5912.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 92–19415 Filed 8–14–92; 8:45 am]

BILLING CODE 6450–01–M

Senior Executive Service; Performance Review Board

AGENCY: U.S. Department of Energy.

ACTION: Designation of PRB Chair and Addition to PRB Standing Register.

SUMMARY: This notice designates the Performance Review Board Chair for the Department of Energy, and adds the names of Senior Executive Service participants from other agencies to our

standing register who will serve as PRB Subcommittee members.

EFFECTIVE DATE: These appointments are effective as of August 10, 1992.

Performance Review Board Chair

Douglas J. Bielan, Chief of Staff, Office of Administration and Human Resource Management, Department of Energy.

Performance Review Board Subcommittee Members

William D. Miller, II, Equal Employment Opportunity Commission.

James R. Perez, Federal Bureau of Investigation.

Issued in Washington, DC, August 12, 1992.

Dolores L. Rozzi,

Director of Administration and Human Resource Management.

[FR Doc. 92–19532 Filed 8–14–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RS92–3–000]

Arkla Energy Resources; Notice of Conference

August 11, 1992.

Take notice that on Wednesday, August 26 and, if necessary, Thursday, August 27, 1992, a conference will be convened in the above-captioned restructuring docket to discuss Arkla Energy Resources' summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The conference will begin at 9 a.m. on August 26, 1992. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Richard White at (202) 208–0491 or Robert Steinberg at (202) 208–1032.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 92–19511 Filed 8–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–30–000]

Carnegie Natural Gas Co.; Notice of Prefiling Conference

August 11, 1992.

Take notice that on August 25, 1992, a conference will be convened in the above-captioned docket to discuss Carnegie Natural Gas Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. For additional information, interested parties may call Joan Dreskin at (202) 208–0738.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–19512 Filed 8–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RS92–5–000, et al. and RS92–6–000, et al.]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co., Location of Prefiling Conference

August 11, 1992.

Take notice that the prefiling conference to be convened August 19, 1992 at 10 a.m. in these proceedings, pursuant to the notice issued August 6, 1992, will be held at the United States Department of Labor auditorium. The entrance to the main lobby of the Department of Labor building is on Third Street at C Street, NW., Washington, DC. The auditorium is located off the main lobby. Photographic identification may be required to enter the building.

For additional information, contact Donald A. Heydt at (202) 208–0740.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–19514 Filed 8–14–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–171–000 and TA92–1–17–005]

Texas Eastern Transmission Corp.; Notice of Further Conference

August 11, 1992.

Pursuant to the Commission's notice issued on July 17, 1992, a conference was convened on Thursday, July 30, 1992, to resolve the issues raised in the above-captioned proceeding. At the conference, the parties agreed to a further conference. Accordingly, a conference has been scheduled for Thursday, August 27, 1992, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–19513 Filed 8–14–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–35–LNG]

Yukon Pacific Corp.; Order Transferring Authorization To Export Liquefied Natural gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order transferring the export authorization granted Yukon Pacific Corporation in DOR/FE Opinion and Order Nos. 350 and 350–A to Yukon Pacific Company, L.P. The transfer is being made solely to meet the future management and financing needs of the Trans-Alaska Gas System Project and will not affect or change any of the conditions underlying FE's public interest determinatioin embodied in Order 350.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 11, 1992.

Anthony J. Comb,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–19535 Filed 8–14–92; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Rate Order No. WAPA–53 Salt Lake City Area Integrated Projects and Colorado River Storage Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice is given of Rate Order No. WAPA–53 (WAPA–53) by the Assistant Secretary for Conservation and Renewable Energy placing into effect on an interim basis the rate for firm power from the Salt Lake City Area Integrated Projects (Integrated Projects) and the rate for firm transmission from the Colorado River Storage Project (CRSP).

SUMMARY: Notice is given of the confirmation and approval by the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) of the Department of Energy (DOE) of WAPA–53 and Rate Schedules SLIP–F4 placing increased firm power rates for capacity and energy from the Integrated Projects, and SP–FT4, placing increased rates for transmission capacity from the CRSP of the Western Area Power Administration (Western) into effect on an interim basis. The interim rates, hereafter called the provisional rates, will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them in effect on a final basis or until they are replaced by another rate.

In the order issued April 14, 1992, in Docket No. EF92–5171–000, FERC confirmed and approved Rate Schedule SLIP–F3 for firm power from the Integrated Projects. The firm power rate expires on September 30, 1992.

The provisional firm power rate contains an increase in the energy charge of 0.5 mills per kilowatthour (mills/kWh), resulting in a total firm energy charge of 8.60 mills/kWh, and an increase in the capacity charge of $0.19 per kilowatt per month ($/kW–month), resulting in a total firm capacity charge of $3.63/kW-month. The combined rate (calculated at a 58.2-percent load factor) increases from 16.2 mills/kWh to 17.14 mills/kWh. This is a 5.8-percent increase.

Pursuant to Delegation Order No. 0204–108, FERC, in the order issued November 1, 1989, in Docket No. EF89–5151–000, confirmed and approved Rate Schedule SP–FT3 for firm transmission service in CRSP administered by Western's Salt Lake City Area Office. The rate was approved for the 3-year period July 1, 1989, through June 30, 1992. The current transmission rate was extended for 1 year from its expiration date of June 30, 1992, to June 30, 1993, by a **Federal Register** notice dated May 7, 1992 (57 FR 19619). Western is adjusting the CRSP firm power rate to establish equity between the two rates and to save Western and its customers time and administrative costs. The CRSP firm transmission rate adjustment is needed because of increased operation and maintenance and investment costs and changes in rate study methodology since the last rate adjustment. The current transmission rate is $21.72 per kilowatt-year ($/kW-year) and is increasing to $22.68/kW-year. This is a 4.4-percent increase.

The rate adjustments for Integrated Projects firm power and CRSP firm transmission are to be placed into effect on an interim basis effective October 1, 1992. The adjusted firm power rate will earn approximately $5.9 million annually in additional power revenue while the adjusted firm transmission rate will earn approximately an additional $182,500 annually for fiscal years (FY) 1993–96.

A comparison of existing and revised firm rates follows:

	Existing rate	Revised rate
Integrated Projects Firm Power Service Rate Schedule	SLIP–F3	SLIP–F4
Firm Capacity Charge ($/kW-month)	$3.44	$3.63
Firm Energy Charge (mills/kWh)	8.10	8.60
Combined Rate (mills/kWh)	16.20	17.14
CRSP Firm Transmission Service Rate Schedule	SP–FT3	SP–FT4
Transmission Rate ($/kW-year)	$21.72	$22.68

DATES: Rate Schedules SLIP–F4 and SP–FT4 will be placed into effect on an interim basis on October 1, 1992, and will remain effective until FERC confirms, approves, and places the rate schedules in effect on a final basis for a 4-year period, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–6372.

Ms. Deborah Linke, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1535.

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary of the DOE; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Firm power rates for the Integrated Projects and firm transmission rates for the CRSP are established pursuant to the DOE Organization Act, 42 U.S.C. 7152(a) and 7191; the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

On July 3, 1991, a letter announcing an informal customer meeting was mailed to all firm power customers and other interested persons. This meeting was conducted on August 1, 1991, in Salt Lake City, Utah. At this informal meeting, representatives of Western and the Department of the Interior's Bureau of Reclamation explained the need for the increase and answered questions from those attending. Both the need for a FY 1992 special "expedited rate" and a longer term (FY 1993–96) rate adjustment (this rate adjustment) were discussed at this meeting. The rate process for the expedited rate began immediately and went into effect on an interim basis on December 1, 1991. FERC confirmed and approved the expedited rate and placed it into effect on a final basis through an order issued on April 14, 1992.

The initial formal consultation and comment period for this (longer term) rate process was initiated on September 18, 1991, with publication of a **Federal Register** notice (56 FR 47203), which officially announced the proposed rate adjustment and procedures for public participation. A public information forum was held on November 13, 1991, in Salt Lake City; and a public comment forum was also held in Salt Lake City on December 4, 1991. This initial consulation and comment period was closed on December 19, 1991. At the December 4, 1991, public comment forum, Western received oral comments from 21 entities or individuals. By the end of the comment period, 295 comment letters were received including 51 written letters and 244 form letters. Several commenters requested that additional time be given to comment on some unresolved issues relative to the rate adjustment. For this reason, a second formal consultation and comment period on the rate adjustments was initiated with the publication of a **Federal Register** notice on January 27, 1992 (57 FR 3053). An additional public information forum was held on March 30, 1992, and an additional public comment forum was held on April 14,

1992, both in Salt Lake City, Utah. The second consultation and comment period closed on May 1, 1992.

Western received seven oral comments at the second public comment forum; and 508 comment letters were received by the end of the comment period, including 15 written letters and 493 form letters. During these two comment periods, which comprised 188 days (95 days for the first and 93 for the second), Western received a total of 803 comment letters.

Most of the comments received at public meetings and in written comments stated that: (1) Costs of environmentally related studies of powerplant operations, etc., and increased purchased power costs associated with decreased powerplant capacity resulting from changed powerplant operations should be nonreimbursable, (2) estimated operation and maintenance costs should be from the latest fiscal-year budgets and should not include unbudgeted items or contingencies, (3) hydrology (generation) estimates should not deviate in the near term from estimates based on long-term modeling, and (4) the comment period should be extended so that the public can see and comment on the final rate order power repayment study.

WAPA-53, confirming, approving, and placing the proposed Integrated Projects firm power and CRSP firm transmission rate adjustments in effect on an interim basis, is issued, and Rate Schedules SLIP-F4 and SP-FT4 will be promptly submitted to FERC for confirmation and approval on a final basis.

Issued in Washington, DC, August 10, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy Assistant Secretary for Conservation and Renewable Energy

Order Confirming, Approving, and Placing the Salt Lake City Area Integrated Projects Firm Power Service Rate and

The Colorado River Storage Project Firm Transmission Rate Into Effect on an Interim Basis

In the matter of: Western Area Power Administration Rate Adjustment for Colorado River Storage Project and Salt Lake City Area Integrated Projects

[Rate Order No. WAPA-53]

August 10, 1992.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.A. 371 *et seq.*., as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 2 to Delegation Order No. 0204-108, published August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western), (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary), and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37385).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

$/kW-month	Monthly charge for capacity (usage $ per kilowatt-month).
$/kW-year	Yearly charge for capacity (usage $ per kilowatt-year).
Addendum Brochure.	The addendum to the October 1991 rate brochure dated March 1992.
Basin Fund	That account in the U.S. Department of the Treasury, established by the CRSP Act, into which all CRSP revenues are deposited and from which all CRSP obligations are paid.
Billing Demand	The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation; or (2) the contract rate of delivery.
Collbran	Collbran Project.
Cost Evaluation Period.	First 5 future years in the power repayment study.
CREDA	Colorado River Energy Distributors Association (customer association).
CROD	Contract rate of delivery.
CRSM	Colorado River Simulation Model—a computerized model of water flows through the Colorado River developed and used by Reclamation.
CRSP	Colorado River Storage Project.
CRSP Act	Act of April 11, 1956, chapter 203, 70 Stat. 105, 43 U.S.C. 620-620o.
CUP	Central Utah Project.
Customer Brochure.	A document prepared for public distribution explaining the background of the initial rate proposal, dated October 1991.
DOE	Department of Energy.
DOE RA 6120.2	A DOE order which provides guidelines for Power Marketing Administration Financial Reporting.
EIS	Environmental impact statement.
Exception Criteria	An agreement entered into by Western and Reclamation on October 21, 1991, setting forth conditions for operating Glen Canyon powerplant outside of parameters set during test flows and in subsequent interim operating criteria, including system regulation, emergency situations, and for the specific purpose of avoiding high-cost replacement power purchases.
FDR	Facilities Development Report. A planning document prepared by Western for all transmission system construction.
FERC	Federal Energy Regulatory Commission.
FY	Fiscal year.
GCD-EIS	Glen Canyon Dam Environmental Impact Statement.
GCES	Glen Canyon Environmental Studies.
General Fund	Account in the U.S. Department of the Treasury.
Integrated Projects.	Salt Lake City Area Integrated Projects, which encompass the combined sales and resources of the CRSP, Collbran, and Rio Grande Projects.
Integrated Projects Rate Order PRS.	A PRS which combines the CRSP, Collbran, and Rio Grande project's PRSs to resolve the blended rate charge for the Integrated Projects' capacity and energy, and which supports a rate order.
IPA	Interim Purchases Amendment.
Interim Purchases	The energy and capacity purchased by Western on behalf of its customers to replace power made unavailable at Glen Canyon Dam by environmentally related water-release restrictions.
kW	Kilowatt (1,000 watts).
kWh	Kilowatthour (1 kW for 1 hour).
M&I	Municipal and industrial.
mills	One-tenth of 1 cent.
mills/kWh	Mills per kilowatthour.
MW	Megawatt (1,000 kW).
NEPA	National Environmental Policy Act.
O&M	Operation and maintenance.
PRS	Power repayment study.
Reclamation	Bureau of Reclamation, U.S. Department of the Interior.
Rio Grande	Rio Grande Project.
RIP	Recovery Implementation Program for endangered fish species in the Upper Colorado River Basin.
RMGC	Rocky Mountain Generation Cooperative, Inc.
SLCAO	Salt Lake City Area Office.
Treasury	U.S. Department of the Treasury.

Upper Colorado River Basin.	The northern part of the Colorado River Basin above Lees Ferry, Arizona, consisting of southwestern Wyoming, western Colorado, northwestern New Mexico, and eastern Utah.
WAPA-45	Description of a Rate Order for the Integrated Projects that corresponds with Rate Schedule SLIP-F2 which was placed into affect on an interim basis on October 1, 1990.
WAPA-52	Description of a Rate Order for the Integrated Projects that corresponds with Rate Schedule SLIP-F3 which was placed into effect on an interim basis on December 1, 1991.
Western	Western Area Power Administration, U.S. Department of Energy.

Effective Date

The provisional rates for firm power and firm transmission service will become effective on an interim basis on October 1, 1992, and will be in effect pending FERC's approval on a final basis for a 4-year period through September 30, 1996, or until superseded.

Public Notice and Comment

The Procedures and Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of these firm power and firm transmission rates. The provisional firm power rate and the provisional firm transmission rate represent an increase of more than 1 percent in total Integrated Projects and CRSP revenues; therefore, they are major rate adjustments as defined at 10 CFR 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process

1. A letter dated July 3, 1991, announcing an informal customer meeting to be held on August 1, 1991, in Salt Lake City, Utah, was mailed to all firm power customers and other interested parties. At this informal meeting, Western and Reclamation representatives explained the need for the increase and answered questions from those attending.

2. A **Federal Register** notice was published on September 18, 1991 (56 FR 47203), officially announcing the proposed firm power rate and firm transmission rate adjustments, initiating the formal public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation. The proposed firm power rate contained in this notice consisted of an energy charge of 11.9 mills/kWh and a capacity charge of $5.06/kW-month or a combined rate of 23.8 mills/kWh. The proposed firm transmission rate was $25.20/kW-year or $2.10/kW-month. The public comment period closed on December 19, 1991.

3. Letters were mailed from Western's Salt Lake City, Loveland, and Phoenix Area Offices on October 8, 10, and 11, 1991, respectively, to all Integrated Projects customers and other interested parties announcing and enclosing a copy of the **Federal Register** notice of September 18, 1991.

4. On October 17, 1991, a customer brochure was mailed from all three Area Offices to all customers and other interested persons. This mailing also included a letter of reminder of the dates and locations of the public information and comment forums.

5. At the public information forum held on November 13, 1991, Western representatives explained in greater detail the need for the rate increases and answered questions.

6. A public comment forum was held on December 4, 1991, to give the public an opportunity to comment for the record. Twenty persons representing 21 customers and customer groups made oral comments at the forum.

7. The first public comment period ended December 19, 1991, during which 21 oral comments and 295 comment letters were received.

8. A **Federal Register** notice was published on January 27, 1992 (57 FR 3053), which announced a second formal consultation and comment period and changed the expected date of the proposed rates from July 1, 1992, to October 1, 1992. The second comment period ended on May 1, 1992.

9. On January 31, 1992, a letter was mailed from the Salt Lake City Area Office to Salt Lake City Area customers and interested parties enclosing the second **Federal Register** notice, which announced the second period of public consultation and comment. A similar letter was mailed from the Phoenix Area Office on February 5, 1992, and the Loveland Area Office on February 3, 1992, to Phoenix and Loveland Area customers.

10. A March 1992 addendum to the October 1991 Customer Brochure was sent to customers and other interested parties on March 13, 1992. This addendum noted changes that had been made to the original customer brochure due to customer comments during the first consultation and comment period and a proposed adjustment to align net revenue between the PRS and the audited financial statements. The revised proposed firm power rate indicated by the addendum brochure PRS was 8.7 mills/kWh for energy and $3.67/kW-month for capacity for a combined rate of 17.34 mills/kWh. The revised transmission rate study produced a rate of $21.96/kW-year, which was only slightly different from the existing rate of $21.72/kW-year.

11. A second public information forum was held in Salt Lake City on March 30, 1992, to explain changes to the proposed rate as indicated by the March 1992 Addendum to the October 1991 Customer Brochure. Questions concerning the proposed rate were also answered.

12. A second public comment forum was held in Salt Lake City on April 14, 1992. Seven oral comments were heard from customers and customer representatives, and 508 comment letters were received.

13. A total of 803 comment letters were received during the two consultation and comment periods which ended May 1, 1992. All formally submitted comments have been considered in the preparation of this rate order.

Project History

The Integrated Projects consist of the CRSP, Rio Grande, and Collbran Projects. The projects were integrated for marketing and ratemaking purposes on October 1, 1987. The goals of integration were to increase marketable resources, simplify contract and rate development and project administration, ensure repayment of Collbran and Rio Grande Project costs, and create a blended rate. The projects maintain their individual identities for financial accounting and repayment purposes, but their revenue requirements are integrated into one PRS for ratemaking purposes.

The CRSP transmission system was constructed with the main-stem water storage and powerplant units of CRSP. In 1978 when Western was created, the transmission portion of the CRSP was transferred to Western while Reclamation retained operation of the powerplants. Since that time, several additions to the system have been made. The purpose of the CRSP transmission system is to reliably transmit power produced at Integrated Projects generation facilities to Federal points of delivery.

Power Repayment Studies

PRSs are prepared each FY to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE RA 6120.2, section 12(b), states:

> In addition to the recovery of the above costs (O&M and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus, (5) other costs such as payments to basin funds, participating projects, or States.

Separate PRSs were prepared for each of the Integrated Projects to establish their individual revenue requirements as described below.

The Final FY 1991 Collbran Project PRS, completed in December 1991 and incorporated into this rate order, indicated a need for $1.56 million/year in annual average power-related gross revenue for the effective period (FY 1993–96). Revenues must cover the costs within the ratesetting year for a project to earn sufficient income.

The Final FY 1991 Rio Grande Project PRS, completed in December 1991 and incorporated into this rate order, indicated a need for $2.45 million/year in annual average power-related gross revenue for the effective period (FY 1993–96).

The Final FY 1991 CRSP PRS showed a need for $127.2 million in annual average firm power-related gross revenue for the effective period (FY 1993–96).

The FY 1991 Integrated Projects PRS was developed by taking the Final FY 1991 CRSP PRS and adding the total annual power-related revenue requirements, generation, and capacity of the Collbran and Rio Grande Projects in the appropriate columns and years.

The FY 1991 Integrated Projects PRS was modified relative to customer comments, the inclusion of 1993 budget data, and a significant audit adjustment to create the rate Order PRS. These modifications reduced the revenue requirements from what was shown in the final CRSP and previous Integrated Projects PRSs.

The Integrated Projects rate order PRS, dated June 1992, indicated the average annual firm power-related revenue requirement is $109.6 million for the effective period (FY 1993–96). This is $5.9 million more in annual average firm power-related gross revenue than would be earned for FYs 1993–96 at the current Integrated Projects combined firm power rate of 16.2 mills/kWh.

Transmission Rate Studies

Transmission rate studies are also prepared each FY to ensure that the firm transmission rate is based on the cost of service of the transmission system.

The Rate Order Transmission Study dated June 1992 indicated that the rate needs to be adjusted from its current level of $21.72/kW-year to $22.68/kW-year for a 4.4-percent increase. This provisional rate would earn an additional $182,500 annually over the 4-year effective period (FY 1993–96) from the existing firm contracts for CRSP firm transmission.

Comparison of Proposed and Provisional Rates

A comparison of the rates as they have evolved during the public consultation and comment period follows:

COMPARISON OF PROPOSED AND PROVISIONAL FIRM POWER AND TRANSMISSION RATES

	Federal Register (September 1991)	Original brochure (October 1991)	Public information forum (November 1991)	Addendum (March 1992)	Rate order (June 1992)
Energy:					
(Mills/kWh)	11.90	11.30	10.36	8.70	8.60
Capacity:					
($/kW-month)	5.06	4.80	4.40	3.67	3.63
($/kW-year)	60.72	57.60	52.80	44.04	43.56
Combined:					
(Mills/kWh)	23.80	22.6	20.70	17.34	17.14
Transmission:					
($/kW-month)	2.10	2.10	2.10	1.83	1.89
($/kW-year)	25.20	25.20	25.20	21.96	22.68

The **Federal Register** notice of September 18,1991, proposed that combined firm power rate to be 23.80 mills/kwh. The rate published in the brochure (October 1991) for the combined firm power rate, had decreased to 22.6 mills/kWh due to updating of studies and clarifications. At the public information forum, it was noted that the estimated purchased power costs from interim operations decreased from $22.7 million to $11.6 million, along with other minor revisions to the study. The combined rate was reduced to 20.70 mills/kWh. A second consultation and comment period was held and an addendum brochure (March 1992) was sent to the customers and interested parties. The addendum brochure proposed the combined firm power rate of $17.34 mills/kWh, based upon more realistic assumptions for purchased power costs and decisions about some of the original issues raised affecting the PRS, such as elimination of use of a trendline analysis, use of budget estimates for annual replacement expense, and elimination of unbudgeted O&M. The addendum brochure included a $51.1 million audit adjustment and the 1993 budget estimates. This Integrated Projects Rate Order PRS has resulted in a provisional combined rate of 17.14 mills/kWh. This final revision to the March 1992 proposal is largely due to the reduction of the audit adjustment to $26.7 million and the revision of cost estimates for interim operations energy costs.

The **Federal Register** notice of September 18, 1991, proposed a CRSP transmission rate of $25.20/kW-year. Because of the use of the 1993 budget estimates in the addendum brochure, the

rate was reduced to $21.96/kW-year. It was proposed at the second information forum that the current rate of $21.72/kW-year would remain as the CRSP transmission rate. During the public information forums and public comment forums, it was suggested that economy energy sales were overestimated in PRS. As a result of this comment, Western reviewed all the revenue credits in the CRSP transmission study. The revenue credits for exchange capacity charges were increased by $677,000 because of a recent change in contract rates. Also, in reviewing financial records, revenues from phase-shifting transformer services were negligible; so it was concluded not to include potential revenues from phase-shifting transformer services. Therefore, the CRSP transmission rate was revised to $22.68/kW-year.

Existing and Provisional Rates

The existing firm power rate was placed into effect on an interim basis on December 1, 1991, and was approved on a final basis by FERC on April 14, 1992. This "expedited rate" was estimated to be necessary to pay the cost of purchased power during FY 1992 due to changed interim operations at Glen Canyon Dam. The expedited rate added a combined rate increment of 1.7 mills/kWh to the 14.5-mill combined rate that had been in effect for the Integrated Projects since October 1, 1990.

The existing firm transmission rate has been in effect since July 1, 1989. Because the firm transmission rate would have expired on June 30, 1992, 3 months before the provisional rate was to be effective, the current firm transmission rate schedule SP–FT3 was extended 1 year by **Federal Register** notice dated May 7, 1992 (57 FR 19619), until June 30, 1993.

A comparison of the existing and provisional rates for both firm power and firm transmission follows:

	Existing rate	Provisional rate
Integrated Projects Firm Power Service Rate Schedule	SLIP–F3	SLIP–F4
Firm Capacity Charge ($/kW-month)	$3.44	$3.63
Firm Energy Charge (mills/kWh)	8.10	8.60
Combined Rate (mills/kWh)	16.20	17.14
CRSP Firm Transmission Service Rate Schedule	SPFT3	SP–FT4
Transmission Rate ($/kW-year	$21.72	$22.68

Certification of Rate

Western's Administrator has certified that the Integrated Projects firm power and the CRSP firm transmission rates placed in effect on an interim basis herein are the lowest possible consistent with sound business principles.

Discussion

Firm Power Rate

Due to growing concern for resources downstream from Glen Canyon Dam, Reclamation is preparing the GCD–EIS to consider alternative long-range plans for operating the dam.

On August 1, 1991, Reclamation changed the operation of Glen Canyon Dam and restricted its peaking power operations. This necessitated the purchase of power to replace that which otherwise would have been generated during peak hours to meet Western's firm contractual commitments. The restrictions, known as interim operations, are anticipated to last through 1994. At that time, it is expected that a permanent water-release regime will be established by Reclamation.

Reclamation's interim operating parameters have changed the timing and pattern of water releases from Glen Canyon Dam. Because Glen Canyon Powerplant produces 70–75 percent of the total power produced by the Integrated Projects, any change in the pattern of its water releases has a major effect on power operations. Reclamation's interim operating parameters require that water be released from Glen Canyon Dam with less fluctuation throughout the day. Reclamation's interim operating parameters mean that Western has less Glen Canyon generation during times of high on-peak load and more during low-load, off-peak periods. This shifting of power generation requires Western to purchase additional power on-peak in order to meet its contractual commitments and to sell additional excess power off-peak at prices normally below the on-peak surplus prices.

Since the beginning of interim operations, many customers have sought an amendment to their contracts that would allow them to purchase needed capacity themselves rather than have these costs reflected in Western's firm power rate. Western has proceeded with a power sales contract amendment to allow interim purchases of capacity. The power sales contract amendment is now referred to as the IPA. With the IPA in effect, Western has reduced its interim operations cost projections in the PRS for 1992–96 to an average of about $3.7 million/year. For customers that chose not to execute the IPA, a purchased power adjustment applicable only to them will be included in the rate schedule. This adjustment is necessary to recover any additional costs that Western may incur for replacement capacity and energy purchases because of interim operations at Glen Canyon Dam. The adjustment is applicable to all customers who request Western to purchase additional capacity for them.

Other reasons for the proposed firm power rate increase are environmentally related costs for the Endangered Fish Recovery Implementation Program, Glen Canyon Environmental Studies, Glen Canyon Dam EIS, and Integrated Projects Electric Power Marketing EIS. The following environmentally related costs have been incurred through FY 1991 and are expected to be incurred through FY 1996:

1984	$441,734
1985	877,815
1986	2,211,616
1987	2,912,557
1988	2,782,501
1989	2,926,481
1990	8,059,600
1991	28,551,929
Subtotal	48,764,233
1992	22,471,000
1993	14,681,000
1994	14,306,000
1995	12,210,000
1996	9,243,000
Subtotal	72,911,000
Total	121,675,233

Along with these added environmental costs, the Upper Colorado River Basin is in the sixth year of a severe drought which has further curtailed hydro-generation and increased the amount of purchased power costs required to meet Western's contractual commitments. The reduction in revenue and increase in costs have created a deficit condition within the

project which has increased interest expenses.

Subsequent to the first comment period, Western identified a major difference in cumulative net revenue between the PRS and the FY 1990 audited financial statement that was put into the PRS as an adjustment. The audit adjustment has been reduced to $26.8 million from the original $51.1 million estimate. In an attempt to ensure that power rates are as low as possible, Western has evaluated several options on how to include this adjustment in the rate order PRS. If the adjustment is entered in equal amounts over 5 future years, as noted on page 12 of the Addendum Brochure and as discussed at the March 30 public information forum, the PRS shows a need for a firm power rate of 17.8 mills/kWh (combined) beginning in FY 1993. However, if the adjustment is entered as a FY 1991 study year adjustment, the PRS solves at 17.14 mills/kWh (combined) in FY 1993. The difference in rates comes from letting FY 1991 show a net deficit and allowing the PRS to repay that obligation in 1996 when money becomes available. It means that the firm power rate only has to recover $3.3 million in annual interest on the deficit, rather than $7.2 million in annual expense to pay the entire amount between FYs 1992 and 1996. That $3.9 million in annual savings through a very "tight" period results in a 0.66 mills/kWh (combined) reduction in the firm power rate.

Other miscellaneous factors such as added investment and increased O&M costs, increased purchased power for firming, and increased interest expense have also contributed to the need for a rate increase. The relative magnitude of these increases is shown in the table detailing revenue and related expenses.

The existing rate consists of an energy charge of 8.10 mills/kWh and a capacity charge of $3.44/kW-month, or a combined rate of 16.2 mills/kWh. The provisional rate consists of an energy charge of 8.60 mills/kWh and a capacity charge of $3.63/kW-month, or a combined rate of 17.14 mills/kWh. This rate increase will result in a $5.9 million increase in annual revenues for the following 4 years (FY 1993–96).

The rate increase is necessary to satisfy the cost-recovery criteria set forth in DOE RA 6120.2.

Firm Transmission Rate

A transmission rate adjustment is needed because of increased O&M and investment costs and changes in rate study methodology that have occurred since the last rate adjustment. The current transmission rate of $21.72/kW-year is increased to $22.68. This is a 4.4-percent increase. The current transmission rate, which would have expired on June 30, 1992, was extended for 1 year by a **Federal Register** notice dated May 7, 1992 (57 FR 19619), so that Western could adjust the transmission rate concurrently with the power rate adjustment. The CRSP firm transmission rate is established to ensure that CRSP firm transmission customers equitably share in payment of costs associated with the CRSP transmission system. Therefore, transmission revenues are credited as "other revenue" to CRSP, thereby lowering the repayment obligations of firm power customers.

The rate adjustment public processes for the Integrated Projects firm power and CRSP firm transmission are being combined because they are interdependent and to avoid duplication and to save both customer and Western administrative costs. All data included in the CRSP transmission rate study are consistent with corresponding data for the rate order PRS.

A CRSP system-wide approach was used in formulating the transmission rate. All costs associated with the CRSP transmission system were summarized and divided by the total firm transmission capacity of both power customers and transmission customers to produce a rate that would be charged to transmission customers. Revenues attributable to the transmission system that are not firm transmission sales, such as nonfirm transmission revenues and miscellaneous revenues, were considered revenue credits and deducted from the annual costs included in the firm transmission rate.

During the public information forums and public comment forum it was noted that economy energy sales were overestimated in the PRS. As a result of this comment, Western reviewed all the revenue credits in the CRSP transmission study. The revenue credits for exchange capacity charges were increased by $677,000 because of a recent change in contract rates. In reviewing financial records, revenues from phase-shifting transformer services were negligible, so it was decided not to include potential revenues from phase-shifting transformer services. Therefore, the CRSP transmission rate was adjusted to $22.68/kW-year.

CRSP TRANSMISSION RATE STUDY

	FY 1993	FY 1994	FY 1995	FY 1996	Average
Cumulative investment	$395,670,124	$404,378,272	$442,859,830	$454,535,786	N/A
Net annual costs to recover	$45,458,939	44,720,236	$48,666,948	$49,972,963	47,204,772
Total capacity (MW)	2059.7	2082.6	2083.0	2083.0	2077.0
Unit cost ($/kW-year)	$22.071	$21.473	$23.364	$23.991	$22.725
Unit cost ($/kW-month)	1.839	1.789	1.947	1,999	1.894

Proposed Rate $/kW-month = $1.89 or $/kW-year = $22.68

Statement of Revenue and Related Expenses

Firm Power

The following table provides a summary of revenue and expense data for the Rate Order No. WAPA–53 rate approval period FY 1993-96. It should be noted that revenue estimates for economy energy sales are much lower than projected in the PRS supporting WAPA-45 and WAPA-52. Since the FY 1989 Integrated Projects PRS was prepared, Reclamation has implemented "interim operation" flow restrictions at Glen Canyon Dam. Those operations have severely restricted sales of economy energy. The restrictions are anticipated to continue into the foreseeable future.

SALT LAKE CITY AREA INTEGRATED PROJECTS COMPARISON OF 5 YEARS RATE STUDY SUMMARY (FY 1993–96) FY 1989 PRS VS. FY 1991 PRS ($1,000)

	FY 1989 PRS [1] FY 1993–96	FY 1991 PRS FY 1993–96	Difference
Revenues:			
Firm power	$364,122	$438,324	$74,202
Economy energy	138,000		(138,000)
Other	50,236	36,982	(13,254)
Total revenues	552,358	475,306	77,052
Revenue distribution:			
Operations and maintenance	140,406	177,314	36,908
Environmental		35,416	35,416
Purchased power:			
Firming	9,080	37,497	28,417
Economy energy	114,000		(114,000)
Interim operations		15,024	15,024
Transmission expenses	26,793	26,276	(517)
Interest	86,948	138,013	51,065
Investment repayment [2]	160,908	29,721	(131,187)
Payments to Collbran and Rio Grande	14,223	16,045	1,823
Capitalized expenses [3]			
Prior-year adjustments			
Total revenue distribution	552,358	475,306	(77,052)
Repayment:			
Payments on defict		29,721	29,721
Payments on project investment			
Payments on additions	126,991		(126,991)
Payments on replacements	33,917		(33,917)
Payments on irrigation aid [1]			
Total repayment	160,908	29,721	(131,187)
Total investment (as of FY 1996):			
Project	678,860	622,746	(56,114)
Additions [5]	178,630	326,473	147,843
Replacements	84,171	117,078	32,907
Irrigation aid	112,218	122,930	10,712
Total	1,053,879	1,189,227	135,348
Unpaid investment (as of FY 1996):			
Project	205,583	230,708	25,125
Additions	18,026	249,882	231,856
Replacements [6]		47,783	47,783
Irrigation aid	95,798	107,933	12,135
Total	319,407	636,306	316,899

[1] The rate order PRS for the WAPA–45 rate process produced a combined rate of 13 mills/kWh. An adder of 1.5 mills/kWh (making a total rate of 14.5 mills/kWh) was imposed for 2 years based on a cash-flow analysis. In 1991 an expedited rate process (WAPA–52), using an incremental approach, added 1.7 mill/kWh to the existing rate of 14.5 mills making a total rate of 16.2 mills/kWh (existing rate). This column includes only the WAPA–45 (13 mills/kWh) PRS since rate increments added since that time were made using analysis that are not comparable to the FY 1991 PRS.
[2] Includes capitalized deficits, replacements, additions, and irrigation aid.
[3] Sum of projected Groups 8 and 9 loans.
[4] Does not include Municipal and Industrial revenues which are credited towards power's obligation to irrigation aid.
[5] The increase in the FY 1991 PRS is due to a reassignment of investments from project to additions.
[6] In the FY 1989 PRS, replacements were projected to be paid off in FY 1996.

Firm Transmission

The following table provides a comparison of rates and revenues for the FY 1993–96 rate approval period for firm transmission currently under contract:

CRSP FIRM TRANSMISSION REVENUES COMPARISON EXISTING RATE VS. PROVISIONAL RATE

	Existing Rate	Provisional rate
$/kW-year	21.72	22.68
$/kW-month	1.81	1.89
Revenues (FY 1993–96)	$16,513,716	$17,243,604

Basis for Rate Development

The provisional Integrated Projects firm power rate was designed to continue to maintain an approximate 50/50 split between revenue earned from demand charges and that earned from energy charges and was based on a 58.2-percent load factor. Because of downstream water delivery obligations, the system load factor in the initial CRSP marketing plan was 58.2 percent. This figure was written into the first CRSP power sales contracts in the mid-1960's. The actual system load factor is estimated to average 53.2 percent for FY 1987–96, but customers have requested that for comparison purposes the 58.2-percent factor remain a part of the rate design. The cost to individual customers will vary, because of differences in their choice of capacity purchases compared to allocated energy amounts.

The provisional firm rate contains a $3.63/kW-month firm-capacity charge and an 8.60 mills/kWh firm-energy charge beginning in FY 1993. Assuming a 58.2-percent load factor, the necessary combined rate is 17.14 mills/kWh, which is an increase of 5.8 percent. The requested rate approval period will extend through September 30, 1996.

The interim firm CRSP transmission rate contains a $1.89/kW-month or $22.68/kW-year capacity charge. This is an increase of 4.4 percent over the existing rate of $1.81/kW-month, or $21.72/kW-year. The existing rate was extended 1 year beyond its expiration date of June 30, 1992, because its adjustment was proposed to be made

concurrently with the firm power rate on October 1, 1992.

Comments

During the two comment periods that comprised 188 days, Western received 803 comment letters (295 during the first period and 508 during the second) on the rate adjustments. At the December 4, 1991, comment forum 20 oral commenters were heard representing 21 entities. At the second comment forum, held on April 14, 1992, seven oral commenters were heard. All formal comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following:

First Comment Period
- Representative J. Brent Haymond (UT)
- Robert E. Burnham (UT)
- Intermountain Rural Electric Association (CO)
- Roosevelt Irrigation District (AZ)
- Dixie-Escalante Rural Electric Association, Inc. (UT)(2)
- Irrigation and Electric Districts Association of Arizona (AZ)
- Electrical District #7 (AZ)
- Bridger Valley Electric Association, Inc. (WY)
- Darwin Hulit (UT)
- Bountiful City Light and Power (UT)
- Brighman City Corporation (UT)
- Union Carbide Industrial Gases, Inc. (NY)
- Strawberry Electric Service District (UT)
- Overton Power District #5 (NV)
- Ferrel D. Hansen (NV)
- Basic Management, Inc. (NV)
- Marion H. Arnoldsen (NV)
- Edith F. Day (UT)
- City of Mesa (UT)
- Michael Singleton (UT)
- City of Ely (UT)
- Public Service Commission of Wyoming (WY)
- Lincoln County Power District #1 (NV)
- Maricopa Water District (AZ)
- City of Boulder City (UT)
- Platte River Power Authority (CO)
- Moon Lake Electric Association, Inc. (UT)
- Electrical District #3 (AZ)
- Lehi City Corporation (UT)
- Arizona Power Pooling Association (UT)
- Flowell Electric Association, Inc. (UT)
- Electrical District #4 (AZ)
- Wellton-Mohawk Irrigation and Drainage District (AZ)
- Arizona Municipal Power Users' Association (AZ)
- Leo L. Curto (NV)
- Electric District #5 (AZ)
- Plains Electric Generation and Transmission Cooperative, Inc. (NM)
- Parowan City Corporation (UT)
- Arizona Electric Power Cooperative, Inc. (AZ)
- Electrical District #2 (AZ)
- National Wildlife Federation (DC)
- Salt River Project (AZ)
- Bureau of Indian Affairs (AZ)
- Kerr-McGee Chemical Corporation (NV)
- Ak-Chin Indian Community (AZ)
- Logan City Light and Power Department (UT)
- Colorado River Commission of Nevada (NV)
- Tri-State Generation and Transmission Association, Inc. (CO)
- Colorado River Energy Distributors Association (UT)
- Mt. Wheeler Power, Inc. (NV)
- Intermountain Consumer Power Agency (UT)
- Form letters (244)

Second Comment Period
- Bruce E. Weight (UT)
- Moon Lake Electric Association (UT)
- Garkane Power Association, Inc. (UT)
- Arizona Power Pooling Association (AZ)
- Intermountain Consumer Power Association (UT)
- Colorado River Energy Distributors Association (UT)
- Bountiful City Light and Power (UT)
- Irrigation and Electrical Districts Association of Arizona (AZ)
- Arizona Municipal Power Users' Association (AZ)
- Strawberry Electric Service District (UT)
- Dixie-Escalante Rural Electric Association, Inc. (UT)
- Tri-State Generation and Transmission Association, Inc. (CO)
- Platte River Power Authority (CO)
- National Wildlife Federation, Grand Canyon Trust, and Colorado Wildlife Federation (DC)
- Mt. Wheeler Power, Inc. (NV)
- Form letters (493)

Representatives of the following organizations made oral comments:

First Comment Period (December 4, 1991)
- Dixie-Escalante Rural Electric Association, Inc. (UT) (2)
- Blanding City (UT) (2)
- Colorado River Energy Distributors Association (UT) (3)
- Tri-State Generation and Transmission Association, Inc. (CO)
- Plains Electric G&T (NM)
- Irrigation and Electrical District Association of Arizona (AZ)
- Garkane Power Association (UT)
- Bountiful City Light and Power (UT)
- City of St. George (UT)
- Utah Municipal Power Agency (UT)
- Murry City Power Department (UT)
- Intermountain Consumer Power Association (UT) (2)
- Logan City Light and Power Department (UT)
- Uintah Water Conservancy District (UT)
- Lyle Norcoss (NV)
- City of Fort Morgon (CO)

Second Comment Period (April 14, 1992)
- Mt. Wheeler Power (NV)
- Colorado River Energy Distributors Association (UT) (3)
- Intermountain Consumer Power Association (UT)
- Irrigation and Electrical District Association of Arizona (AZ)
- Murray City Power Department (UT)

The contents of the comments are summarized according to 10 major comment areas as follows:

1. Operation and Maintenance Costs
2. New Investment Costs
3. Environmental Costs
4. Basin Fund Management/Financial Risk
5. Rate Design
6. Public Process
7. Purchased Power Costs
8. Unbudgeted Costs
9. Audit Adjustment
10. Miscellaneous

Following are synopses of the public comments (written and verbal) received during the first and second public consultation and comment periods relating to the proposed Integrated Projects firm power rate and CRSP firm transmission rate increases presented in the October 1991 Customer Brochure and its March 1992 Addendum, and Western's responses. Comments are grouped according to the subject being addressed.

1. Operation and Maintenance Costs

Comment 1.1: O&M costs should be revised to reflect Reclamation's and Western's current estimates (FY 1993 budgets) for the 5 budget years, FY 1992–96. Final FY 1991 financial data should be included in the PRS.

Response: The rate order PRS O&M estimates were revised to reflect Reclamation's and Western's final FY 1991 financial data and CRSP FY 1993 budget estimates for FY 1992–96. The only exception to use the FY 1993 budget estimates was the addition of $1 million/year for emergency O&M. This addition is explained in the response to Comment 1.6.

Comment 1.2: Input from CREDA's O&M review process should be reflected in the budgets.

Response: Input from CREDA's O&M review process was reflected in the FY 1993 budget estimates, and these budget estimates are included in the Integrated Projects Rate Order PRS.

Comment 1.3: O&M increases were not fully explained. Western and others involved should have outside people come in and investigate where the maintenance costs are and see if there is a way to cut costs.

Response: O&M increases from the FY 1989 PRS to the FY 1991 PRS for FY 1991–96 are displayed and explained on pages 9 and 21 of the October 1991 Customer Brochure. The largest increase in O&M occurs in FY 1991. The future O&M cost estimates in the FY 1989 PRS were based on figures in the FY 1990 budgets. The future O&M cost estimates in the FY 1991 brochure PRS were based on figures in the FY 1992 budget.

As explained in the October customer brochure on page 21, Reclamation has tended to underestimate costs beyond the first future budget year. Table 2 of the October customer brochure compares an underestimated value for FY 1991 from the FY 1990 budget with FY 1991 current year estimate from the FY 1992 budget. In the FY 1989 PRS, 1991 was an "out year." These differences for Reclamation were mostly in the category of powerplant O&M and administrative and general expense. The largest difference in Western's O&M estimates was in the category of General Western Allocation.

O&M estimates from the FY 1993 budget used in the March addendum and the rate order PRS are generally lower than those from the FY 1992 budget used in the October customer brochure. The FY 1993 budget is less because of Western's and Reclamation's establishment of a better budgeting process due to cost containment initiatives and budget tracking and partly a result of customer participation in the planning and review process.

Comment 1.4: It was suggested that Western put the latest budget information for Collbran and Rio Grande, developed in the O&M review process for the FY 1993 budget, into the PRS.

Response: Western felt that the FY 1991 Collbran and Rio Grande PRSs, which included the FY 1992 budget data, were appropriate studies to use in the rate order PRS. Western used the FY 1993 CRSP budget data in the FY 1991 CRSP rate order PRS because concern was manifested about the validity of the budget estimates from the FY 1992 budget for CRSP. Western compared the Collbran and Rio Grande budget data for 1992 and 1993 and determined that there would be little or no rate impacts, since revenue requirements for the two projects are less than 5 percent of the total revenue requirements for the Integrated Projects.

Comment 1.5: The "trend-line" should not be used to establish projections. However, the trend-line analysis could be used as a tool in comparing the relative productivity of the agencies and in evaluating cost containment.

Response: Since estimates shown in the FY 1993 budget were considered to be more realistic than those of previous years' budgets, the trend-line concept included in the original rate brochure is no longer being proposed. Both Western and Reclamation have committed to estimate budgets more closely in the out years. The trend-line analysis has been and will continue to be used as a tool for budget comparison. Also see response to comment 1.3.

Comment 1.6: There was no apparent attempt to base the level of emergency expenses on historical experience. Object to including $1 million per year for "emergency" O&M for Reclamation.

Response: Pages 24 and 25 of the October brochure show that $2.65 million was the annual average emergency expenditure for Reclamation for FY 1978 through 1990. Western concluded that at least $1 million annual amount is an appropriate entry into the rate order PRS and will be included in future O&M budgets to cover unforeseen contingencies.

Comment 1.7: Costs of Navajo Dam repairs are attributable to the Safety of Dams Act and should be nonreimbursable.

Response: This issue was discussed in the WAPA–45 rate order proceeding. Reclamation's position has not changed since the WAPA–45 rate order proceeding. At that time, Reclamation indicated that it had funded Navajo Dam repairs under section 5 of the CRSP Act rather than under the Safety of Dams Act.

2. New Investment Costs

Comment 2.1: Upgrades should be funded by appropriations rather than from the Basin Fund.

Response: Western's upgrades and transmission facility additions are funded by appropriations. Reclamation has informally agreed to seek appropriations for new additions.

Comment 2.2: Decisions to make additions should be based on benefit-cost analyses.

Response: When Western considers a facility addition, it prepares an FDR. In this report, an analysis is done to determine if the action is favorable. Western bases its decision to construct additions on several factors including system reliability, need for additional capacity, customer interest and/or participation, cost, and impact on rates. These justification analyses, where possible, include a quantification of benefits and costs. Reclamation has made few additions since the main-stem storage and generation facilities were completed in the late 1970's. Additions that have been made were required by Government regulation or were analyzed with a benefit-cost analysis.

Comment 2.3: The benefits of new transmission investment should be reflected the year the new investment is added.

Response: This has been done. For example, the estimated transmission costs Western will pay to Public Service Company of New Mexico have been reduced in 1994 when the Ojo Line Extension is planned to be in place.

Comment 2.4: Future investments should not be included in the rate. Rates charged to current ratepayer should reflect current costs, not prepay costs for future ratepayer.

Response: Planned power investments expected to be put into the PRS within the cost evaluation period (FY 1992–96) and replacements for the life of the project are included in the rate as required by DOE RA 6120.2. Western is also required to include construction and set revenue apportionment obligations for the CRSP participating projects unless specifically exempted by the terms of the Western/Reclamation agreement of August 26, 1983.

Comment 2.5: Costs of the Central Utah Project (CUP) should not be included in the rate base, neither "A" nor "B" costs.

Response: This issue was discussed in detail in a previous rate order proceeding (WAPA–45) and Western's position remains the same. The "A" or sunk costs of the CUP are included in the rate base. The "B" costs are those that do not meet the criteria set forth in the Western/Reclamation agreement on CRSP PRSs dated August 26, 1983. The "B" costs are not included in the ratesetting years in the PRS.

Comment 2.6: Western should not include components of CUP which are not authorized and funded.

Response: See comments 2.4 and 2.5 above. If projects do not meet the criteria established, they are not put into the power rate. CUP costs are authorized but some facilities are not funded. Under the 1983 agreement mentioned in comment 2.5 above, funding availability is not a factor when determining if the costs should be included in the ratesetting years in the PRS.

Comment 2.7: Is is inappropriate to speculate about future Federal legislation and to include estimated cost impacts in the rate proposal.

Response: No costs for any "speculative" legislation are in the rate order PRS. Such costs would be considered in the next rate process if legislation were passed.

Comment 2.8: Western should include an additional 3 mills in the rate to "catch up" with delayed Federal repayment. Western should institute a 4-mill surcharge for peak power from July 1, 1992, through September 30, 1992.

Response: CRSP investments are repaid as revenue is available rather than according to an amortized repayment schedule. This flexibility allows for the fluctuation in revenues available for investment repayment inherent in hydro-generation power facilities. The PRS takes into account these fluctuations in generation when it solves for a rate so that, according to Delegation Order No. 0204–108, the rate is the lowest possible consistent with sound business principles. Therefore, there is no need for any kind of "catch up" of delayed Federal repayment. Also, by incorporating near-term generation, reflecting drought conditions, the PRS calculations reflect an appropriate level of required revenues. Capitalized deficits which have previously accrued will be repaid within 5 years.

Comment 2.10: Western should follow sound business practices in developing power repayment and ratemaking studies halting the use of the "highest interest first" repayment methodology.

Response: Paying highest interest debt first, is generally considered a prudent business practice. Moreover, Western normally distributes the power revenues for repayment to the "highest interest-bearing" investment first according to DOE RA 6120.2, paragraph 8(c)(3). Under the Western/Reclamation agreement dated August 26, 1983, "project costs will be repaid in the manner that minimizes their effect upon CRSP revenue requirements" which sometimes requires deviation from the requirement of paying the highest interest-bearing investments first.

3. Environmental Costs

Comment 3.1: All environmental costs (RIP, GCES, GCD–EIS, Integrated Project EIS, and Interim Operations) should be nonreimbursable, and funded by appropriations under section 8 (CRSP) and should not be repaid by power revenues.

Response: This issue was addressed in two previous rate proceedings (WAPA–45, Docket No. EF90–5151–000 and WAPA–52, Docket No. EF92–5151–000). Western's position on this issue has not changed. However, legislation is pending (Grand Canyon Protection Act) that could affect Western's position. If such legislation is enacted, Western will change future PRSs as required by the legislation. Furthermore, Reclamation is reviewing the issue to see if its policy can and should be changed regarding reimbursability of environmental costs Reclamation-wide. If Reclamation changes its position concerning the reimbursability of any Integrated Projects costs paid with power revenues, appropriate adjustments will be made in the next PRS and the next rate process.

Comment 3.2: Oppose ratepayer paying full cost for environmental studies. If Grand Canyon is national treasure then costs should be paid by all U.S. taxpayers.

Response: See response to comment 3.1.

Comment 3.3: Western's purchased power costs for Interim Operations are section 8 (CRSP) and should not be charged to Basin Fund and power users.

Response: See response to comment 3.1. The Secretary of the Interior has directed Reclamation to restrict operation of the Glen Canyon Power Plant while the effects upon the Canyon environment due to various releases are being studied. These release restrictions have made it necessary for Western to purchase power to meet contractual obligations. These added annual costs are reflected in the rate. The costs of this purchased power required as a result of flow restrictions is considered to be reimbursable from power revenues.

Comment 3.4: Contingency funds should not be budgeted for future environmental studies and programs.

Response: No contingency amounts for environmental programs are included in the budgets. All estimates are for planned environmental studies.

Comment 3.5: U.S. Government has an obligation to replace any lost capacity at Glen Canyon Dam or to investigate a reregulation dam below Glen Canyon Dam.

Response: The U.S. Government is obligated only to replace lost capacity and energy that is required to meet its contractual obligations. Most of Western's customers have chosen to assume the risk associated with lost capacity at Glen Canyon Dam through the IPA. For those customers who do not exercise this option, Western will purchase the capacity required to meet all CROD obligations. The cost of the purchased power will be passed on to those customers who receive it.

4. Basin Fund Management/Financial Risk

The following public comments were made concerning the management of the Upper Colorado River Basin Fund:

Comment 4.1: We urge Western to give further consideration to CREDA's recommendations for a ratemaking methodology that incorporates risk management.

Comment 4.2: We urge Western to avoid hedging its expense and generation estimates and reconsider CREDA's recommendation to make a comprehensive review of all its financial risks in conjunction with each rate proposal.

Comment 4.3: Western proposes essentially to overest'mate expenses in order to address a financial risk.

Comment 4.4: Contingencies for financial risks, such as the loss of exception criteria, should be part of Western's overall risk management policy.

Comment 4.5: Western's rate proposal incorporates costs based on something other than the best available estimate of its expenses. It has excused itself for the likelihood that such estimates will recover more than actual expenses by indicating that this conservatism will safeguard against future cash-flow problems and will be used to pay off investment and reduce interest more quickly than would otherwise occur. Oppose Western's approach of managing its financial and rate risks by overstating costs of certain items in order to provide what it perceives as a necessary cushion of additional revenues over and above its expected costs.

Comment 4.6: Rather than basing rates on biased forecasts, the better approach is for Western to directly address its financial risks. This should include determining the source and level of uncertainty in future revenues and costs; evaluating the combined, not isolated, effect of these uncertainties; and developing cash management and rate policies to mitigate this risk to an acceptable level. (CREDA lists five proposals for managing the financial risks to the Basin Fund.)

Comment 4.7: Oppose Western's proposal to fund replacements and emergencies as an O&M expense item. Cost of renewals and replacements should not be funded in this manner.

Comment 4.8: Oppose Western's proposal for a separate reserve fund in the Basin Fund for replacements and emergency expenditures. Not in accordance with DOE RA 6120.2.

Suggest Western needs to address and then manage financial risks.

Comment 4.9: Oppose the proposed changes concerning advance payment for replacements, including the creation of a "slush-fund" (reserve). If this fund were established, it should earn interest.

Response (Comments 4.1–4.9):

Risk management, as proposed by CREDA, relates to Western's management of the Basin Fund. Western appreciates CREDA's efforts to provide a risk management plan and will investigate it further in the future.

However, Western does not intend to implement it at this time for the following reasons:

1. Western has dropped the proposal of implementing and maintaining a reserve for replacements and emergency expenditures funded by additional power revenues.

2. Western has dropped the proposal of using a trend-line for O&M estimates beyond the first 2 years of the cost evaluation period and will instead require better budgeting by both Western and Reclamation.

3. Western has transferred most of the financial risk related to the exception criteria for the interim flow restrictions at Glen Canyon Dam to the customers through the IPA to their contracts.

4. Western has concluded that risk management of the Basin Fund is not a rate process issue, but is an internal management issue for the following reasons:

a. The CRSP Act provides for the retention of revenues from power sales in the Basin Fund to be used as a funding source for O&M, replacements, and emergency expenditures rather than transferring the cash to the General Fund and then requesting appropriations for these purposes.

b. Every dollar paid by the power customers is credited toward the repayment of project expenses allocated to be repaid by power revenues including investment costs. This is the case whether these payments are retained in the Basin Fund or transferred as cash payments to the General Fund. The firm power rate is not affected as long as Western retains sufficient revenues in the Basin Fund. Power revenues designated for investment repayment by the PRS (including replacements) reduce project repayment obligations and, therefore, reduce further investment interest costs. Since the revenues are credited as repayment, no interest is earned on these revenues.

c. Western has recently incurred less expense than anticipated for purchased power and other anticipated costs and has retained more monies in the Basin Fund during FY 1991. This has left more cash in the Basin Fund than originally projected.

Western's risk management plan for the Basin Fund will consist of the following:

1. Sufficient revenues will be retained in the Basin Fund to provide for the planned O&M, replacements, and emergency expenditures for the 5-year cost evaluation period over and above a conservative estimate of expected revenues.

2. Further cash transfers to the General Fund will not be made until sufficient cash amounts are available to meet operating needs through the cost evaluation period.

3. Western will make the best estimates with the available information; and if shortfalls occur for purchased power, unbudgeted environmental expenses, emergency expenses, etc., Western will cover these additional expenses from amounts retained in the Basin Fund.

4. Western will follow the same methodology for future estimates and calculations as in previous years. All methods used will be in accordance with DOE Order RA 6120.2.

5. Western will continue to capitalize replacements for repayment purposes. This will require customers to repay the investment with interest over the estimated service life of the investment or 50 years, whichever is less.

6. Customer reviews of program planning will aid in the preparation of estimates for generation, O&M, additions, and replacements.

7. Any amounts not collected because the rate was too low will be factored into the next rate process.

Comment 4.10: CREDA is concerned with Western's failure to explicitly address financial risk management in its addendum proposal * * * CREDA does not consider Western's removal from its addendum proposal of several, but not all, contingencies included in previous expense estimates the equivalent of financial risk management.

Response: Western recognizes that CREDA has spent considerable effort in developing a risk analysis. Western welcomes the assistance of CREDA and other customers in this regard and will work with them on evaluating management of the Basin Fund. At the present time, however, Western takes the position that it has been responsive to comments from the customers.

5. Rate Design

In the October 1991 Customer Brochure, Western asked for comments concerning the following questions:

a. Should Western give greater weight to the capacity charge, since a greater capacity value may encourage more efficient usage of capacity?

b. Should the billing determinants or "Billing Demand" be examined?

c. Should the "take or pay" provision, which is the highest 30-minute demand or the CROD, whichever is greater, be changed to charge on actual demand used in any given month?

d. Should the energy charge be "capped" by the least-cost alternative energy cost? The resultant revenue deficiency would then be made up through an increased capacity charge.

The following public comments were made concerning rate design.

Comment 5.1: Customers oppose any change in the current capacity/energy split, and believe some customers may not be benefitted by a change in rate design.

Comment 5.2: Some customers want cost recovery through cost-based rates as the first priority.

Comment 5.3: Customers are not opposed to the possibility of rate design on a mutually agreeable basis if that is a better utilization of CRSP power.

Comment 5.4: The customers want to institute an on-peak/off-peak pricing structure.

Comment 5.5: Some customers expressed a desire that the majority of revenue should come from energy, while others felt Western should place a higher value on capacity.

Comment 5.6: Some customers want rate design to encourage conservation and efficiency.

Comment 5.7: The customers want Western to sell excess capacity and energy to existing customers first.

Comment 5.8: Some customers want Western to encourage demand-side management. Others feel that this penalizes those who have little control over consumption.

Comment 5.9: Some customers believe that Western would have more short-term capacity available to sell if monthly demand charges replace the seasonal CROD charge. They think the 35-percent minimum schedule requirement has been a serious problem for systems needing energy in excess of the capacity factor of the CRSP (Integrated Projects) resource, and Western should allow customers to purchase their energy from Western to more correctly match their needs and not be limited to make such purchases based upon the historical energy available from CRSP (Integrated Projects).

Comment 5.10: Some customers believe it is not appropriate to use thermal generation as a target for hydroelectric rates.

Response: (Comments 5.1–5.10):

Western agrees with the comment that cost recovery through cost-based rates is the first priority. One customer has requested that excess capacity and/or energy during off-peak periods be made available to customers. This request is being studied by Western. Another customer objected to Western using thermal generation as a target for hydroelectric rates. Western rates are cost-based and do not use a target of thermal generation. Thermal generation was only used as an example of an alternative source for energy in the October brochure.

Western is maintaining the 50/50 cost assignments in the provisional rate. The majority of the customers wanted to retain the current rate design.

Western's Conservation and Renewable Energy Program has been encouraging the adoption of demand-side management programs for several years now. In the future, it is expected that Western customers will be encouraged to evaluate demand-side management options as an important component of Western's proposed Energy Planning and Management Program. As a result of customers comments in this rate process, Western's SLCAO is investigating a voluntary alternative rate that has an objective of shifting load from on-peak to off-peak using price differentials to encourage conservation and to improve the efficiency of the overall power system, which if implemented would also encourage demand-side management.

As part of this study, the SLCAO will offer direct technical assistance to one utility customer who will participate with Western in a 2-year pilot rate project. All proposed rate design changes will meet Western's goals of avoiding cross subsidies and meeting repayment obligations to the Treasury. The components of the pilot rate project will:

—Test the various effective rate designs on all participants.
—Collect information on Western and customer loads.
—Determine the long-run incremental costs for Western's resources and purchases.
—Determine the overall benefits and costs of participants and nonparticipants in the pilot rate project.
—Determine the price signal effects on end users through load monitoring.
—Determine the effect on the customers' other suppliers.
—Determine any necessary contract changes needed to implement a rate.
—Examine the billing determinants such as charging capacity and energy on a monthly basis rather than a seasonal basis and off-peak/on-peak pricing differentials.
—Evaluate the overall effectiveness of the rate for inclusion in a subsequent rate process.

Because the first year of this 2-year study will consist of baseline load monitoring and rate development, the alternative rate will not be developed in time for this rate adjustment.

6. Public Process

Comment 6.1: Commenters requested that Western reopen the comment period.

Response: On January 27, 1992, Western opened a second consultation and comment period which was announced in the **Federal Register**. It closed on May 1, 1992.

Comment 6.2: Commenters requested that Western extend public process beyond May 1, 1992.

Response: Western feels that no new issues have been raised that would require further extension of the comment period. The 95-day extension of the initial 93-day public comment period has provided ample time to comment on the proposed rate action.

Comment 6.3: Commenters requested that Western continue team effort to amend the contracts for interim purchases.

Response: Contracts have been offered to customers for amendment. It is anticipated that most customers will choose to have their contracts amended.

Comment 6.4: Commenters requested that Western resolve terms and conditions of the Integrated Projects contract amendment for interim purchases and include in public process and proposed rate.

Response: See response to comment 6.3

Comment 6.5: Commenters stated that the public process is restricted by FERC rate order approval of the expedited rate [EF92–5171–000]; i.e., any change Western makes after the final information forum cannot be reviewed by the public prior to FERC filing. Information provided by Western after the last information forum should not be put into the rate.

Response: Western agrees that no new issues should be generated or raised for the first time after the final consultation period is closed. However, Western reserves the right to incorporate changes made after the end of the comment period in response to public comments in the provisional rate. This is a longstanding Western practice. Customers are provided documentation of the rate order and decision after filing with FERC.

Comment 6.6: Commenters stated that Western failed to provide sufficient information on the rate adjustment for the public to prepare fully informed comments.

Response: Western provided a rate brochure and an addendum (October 1991 and March 1992) that explained the proposed rates, two consultation and comment periods during which interested persons were given the opportunity to review the information used in developing the rates, two information forums, and two comment forums. Western has made all information available to interested parties, has responded to all data requests, and has given ample time to obtain the needed information within the 188-day public process period.

7. Purchased Power Cost

Comment 7.1: Questioned the basis for projections of hydroelectric generation, specifically the use of (a) a 5-year moving average for raw projections of annual energy and capacity from the CRSM results and (b) the near-term CRSP annual generation adjustment. Suggested the use of unadjusted CRSM results for average generation as the basis for purchased power costs.

Response: In the public process for this rate adjustment, Western has provided analytical support for the use of a modified 5-year moving average, or "smoothing," to the raw projections of annual energy and capacity from the CRSM results prepared by Reclamation (see March 1992 Addendum Brochure, section F, page 7). Western continues to support this accepted forecasting method, which has been consistently applied in previous PRSs for the Integrated Projects.

Similarly, Western continues to support the application of a near-term adjustment applied to the average annual generation projections from the CRSM for the period 1992 through 1996. This analytical support is based upon the concern that the hydrologic conditions used in the CRSM modeling were limited to the historic inflow period through 1985, and therefore excluded the effects of below-normal inflow events that occurred after 1985. Absent such adjustments, annual revenues may not be sufficient to meet annual expenses. This conclusion, and the associated adjustment, were presented by Western in the March 30 Public Information Forum (see transcript 27–31) and in the March 1992 Addendum Brochure, section F, pages. 7–8.

Comment 7.2: Western is correct in using the near-term generation estimates for the rate order PRS.

Response: See response to comment 7.1.

Comment 7.3: The model used by Western to simulate the scheduling of power from Glen Canyon Dam was found to account improperly for current operating restrictions. CREDA has been led to believe that Western has received a revised model which, presumably, it will ultimately use to estimate purchased power costs.

Response: The most current, peak-shaving algorithm developed by the Environmental Defense Fund, was used in simulating hourly patterns of generation from Glen Canyon with and without Interim Release constraints. The latest version of the program reflects consideration of the current release constraints at Glen Canyon, which have been refined since their initial application in August 1991.

Comment 7.4: The evaluation of purchased power expense fails to properly account for generation from non-main-stem projects, including Seedskadee, Provo, Rio Grande, and Collbran. This understates available generation and accordingly overstates net purchased power expenses. While Western has provided CREDA the pricing calculations, it has failed to provide any quantitative or qualitative explanation of the pricing differences assumed between the two cases [base case and change case].

Response: In the March 1992 Interim Release Assessment, Western neglected to consider the generation available from the smaller Integrated Projects (Rio Grande and Collbran Projects). Therefore, Western revised the Interim Release Study and PRS interface to include resources from collbran and Rio Grande. Since CRSP purchases the available output from Provo River and Seedskadee projects, these resources are already included in the Integrated Projects generation. Many comments received were focused on other specific assumptions and methods that Western applied in the determination of the annual purchased power expenses and foregone nonfirm sales revenues associated with future operation of the Integrated Projects, with constraints at Glen Canyon Dam. In the March 1992 Addendum Brochure, Western estimated the increased annual expense associated with changes at Glen Canyon in the addendum brochure to range from $6–$8 million.

Western considered all critical comments on the estimate of increased annual expense and has made several significant modifications to certain methods and assumptions. These modifications have resulted in the reduction in estimated impacts associated with interim releases to be approximately $3.7 million annually. The most significant modifications are summarized below.

1. Loads and Resource Assumptions and Relationship to PRS: To remedy double-accounting problems previously identified by CREDA from the March 92 Addendum Brochure, Western has assured that the components of annual load and resources used in the rate order PRS are also used in the hourly analysis of interim release expenses for FY 1992, 1994, and 1996, and in the annual estimate of impacts from 1993, 1995, and 1997 through 2004.

2. Peak-Shaving Methods, Glen Canyon Generation: See response to comment 7.3.

3. Purchase Power Projections and Pricing: Many changes have been made to the projections of purchase power amounts and to the structure of pricing assumptions for purchase power. Purchase power projections now consider the additional transmission loss associated with purchases from other sources. Pricing of replacement energy reflects:

a. Identical price and structure for both the base case (without interim release constraints) and change case condition (with interim release constraints);

b. Seasonal price variation between winter and summer seasons;

c. Variable period pricing to reflect differing value of energy between weekday and weekend (Sunday) periods, and on-peak and off-peak periods; and

d. Tier pricing reflecting Western's obligations under an existing long-term purchase agreement.

4. Nonfirm Sales Projections and Pricing: The basis for projecting nonfirm energy sales has been revised to omit nonfirm sales under base-case conditions and to only estimate "forced" nonfirm sales under change-case conditions. Application of the previously proposed regression analysis for forecasting nonfirm sales will be deferred until additional analytic work has been completed and adequate support has been established. Under change-case conditions, forced off-peak generation that exceeds firm load is regarded as a "forced" nonfirm sale. The expense associated with this forced generation was calculated by multiplying the surplus off-peak generation by the difference between the upper-tier purchase price and the off-peak purchase price. This is a conservative approach because it assumes that the forced off-peak generation would have gone to displace an on-peak purchase rather than to make a nonfirm sale.

5. Purchased Power Expense and Interim Release Impacts Beyond 1996: Rather than continue the past proposal to hold constant the FY 1996 financial impacts for each future year through 2004, Western has developed differing annual estimates of purchased power and foregone nonfirm sales revenues which are linked to the projected hydrologic conditions within each year between FY 1996 and FY 2004.

The complete documentation for this recent analysis, which details these significant modifications, and other lesser changes, is contained in separate work papers entitled, "Interim Release Expense Analysis, FY 1992–2004, Salt lake City Area Integrated Projects, June 1992," (June 1992 interim release analyses) and is incorporated by reference here and included as a component of this final rate order record. It will be made available upon request.

Comment 7.5: Western has failed to explain the significant discrepancies between the total purchased power expenses incorporated in the addendum PRS and the results of the analyses presented in a data request. The calculation of purchased power expenses, as set forth in the spreadsheets provided by Western to explain and support its purchased power projections, are inconsistent.

Response: To remedy double-accounting problems previously identified, Western has assured that the components of annual load and resources used in the rate Order PRS are also used in the *hourly* analysis of interim release expenses for FY 1992, 1994, and 1996, and in the *annual* estimate of impacts from 1997 through 2004.

All discrepancies between the addendum PRS and the March Interim Release analysis have been remedied in the Integrated Projects Rate Order PRS and the June 1992 Interim Release analysis.

Comment 7.6: Western has explained that it forecasted total, nonfirm sales using a mathematical equation that was estimated by a statistical analysis of historical sales data. In response to CREDA's request, it has also provided the data itself, but only the numeric data actually incorporated in the estimate. No explanation was provided, however, to justify the relationships embodied in the equation or the appropriateness of the historic data series utilized for the

analysis, or even describing the data variables themselves.

Response: See response to comment 7.3.

Pricing of projected "avoided" nonfirm sales has been based on the conservative assumption that "forced" nonfirm sales during off-peak periods would result in increased on-peak purchases, which are then valued at the incremental "expense", or the difference between the highest on-peak purchase expense and the off-peak purchase expense (which is identical to the off-peak sales revenue).

The complete documentation for the projection of future purchase power expenses and associated "forced" nonfirm energy sales is contained in separate work papers entitled, "Interim Release Expense Analysis, FY 1992–2004, Salt Lake City Area Integrated Projects, June 1992," and is included in the record as a component of this rate order.

Comment 7.7: Western has based its pricing assumptions on its agreement with RMGC but has consistently purchased nonfirm energy below those contract rates.

Response: See response to comment 7.4. Purchase price assumptions used in the June 1992 analysis of interim release expenses ("Interim Release Expense Analysis, FY 1992–2004, Salt Lake City Area Integrated Projects, June 1992") continue to assume that prices contained in the long-term energy purchase agreement with RMGC are representative of future energy purchases up to the limit of the obligation in the agreement and the purchase need. Beyond the schedule obligations of the RMGC agreement, Western has established a multitier pricing structure based on historical pricing relationships.

Comment 7.8: Use $3 million rather than $22.7 million for interim operations costs.

Response: Earlier estimates of interim release annual net expenses, including the $3 million estimate, considered only firming purchases of nonfirm energy. The current approach incorporates the added impact of "forced" nonfirm economy energy sales and the resultant expense of on-peak energy purchases. This approach, and the consideration of conservative pricing assumptions, results in an additional financial impact of approximately $3.7 million annually. Also see response to comment 7.10.

Comment 7.9: Disagree that Western may lose the exception criteria after March 31, 1992.

Response: There is no certainty that exception criteria will continue beyond any extension.

Comment 7.10: Most customers want to amend contracts to include pass-through cost concept.

Response: Since the beginning of interim operations, many customers have sought an amendment to their contracts that would allow them to purchase needed capacity themselves rather than have these costs reflected in Western's firm power rate. Western has proceeded with a power sales contract amendment to allow interim purchases of capacity. A power sales contract amendment is now referred to as the "Interim Purchases Amendment" (IPA). With the IPA in effect, Western has reduced its interim operations purchased power cost projections in the PRS for 1992–96 to an average of about $3.7 million/year. For customers that chose not to execute the IPA, a purchased power adjustment applicable only to them will be included in the rate schedule. This adjustment is necessary to recover any additional costs that Western may incur for replacement capacity and energy purchases because of interim operations at Glen Canyon Dam. The adjustment is applicable to all customers who request Western to purchase additional capacity for them.

Comment 7.11: Some customers think energy sales by Western should not be limited to the CRSP resource.

Response: Western does not plan at this time to market non-Integrated Projects power on a long-term firm basis above the amount needed for firming purchases. Western is presently conducting an environmental impact statement on the Electric Power Marketing Plan and Criteria for the Integrated Projects. Western is considering several options as part of that effort for various levels of power production. Integrated Projects power marketed is supported by firming purchases needed to meet contractual commitments.

8. Unbudgeted Cost

Comment 8.1: It is inappropriate to guess at future costs.

Response: Western has incorporated the estimates of it's and Reclamation's FY 1993 budgets in the Integrated Projects Rate Order PRS. There are presently no "unbudgeted" O&M costs in the proposed rate, with the exception of $1 million per year for emergencies, which will be put into future budgets.

Comment 8.2: Budgeting process should be based on definite guidelines or criteria to ensure accuracy. Western should have good support for using other than budgeted numbers. Western should correct the budgeting process rather than create a budget floor.

Response: Western and Reclamation have initiated a customer participation review process to estimate expenses for future years. Both agencies have agreed to limit their Basin Fund requests to amounts included in their approved budgets, except in unforeseeable emergencies.

Comment 8.3: Care should be taken not to set rates for current and future customers to recover funds not correctly collected from past customers.

Response: Western is required to recover all costs assigned to power for repayment. All of these costs are factored into the rate base and the rate is set to recover these costs within the required period.

9. Audit Adjustment

Comment 9.1: CREDA appreciates Western's efforts to reduce the magnitude of the adjustment (audit adjustment), since this has a significant impact on the rates. CREDA strongly disagrees, however, that interest should be accrued on this adjustment.

Response: The interest amount of $6.9 million is included in FY 1991. This adjustment affected years 1987 through 1990. To not recalculate interest during that period would effectively grant an interest-free loan to Western's customers. In the past, the auditors have recalculated interest on audit adjustments for both increases and decreases to net revenues. This is a generally accepted accounting principle that Western has and will continue to follow.

Comment 9.2:

What structure or procedure has DOE or Western adopted to implement the Chief Financial Officer (CFO) Act of 1991?

2. Does Western have a CFO, a deputy CFO? Who are they?

3. Did DOE or Western help prepare a 5-year financial management system plan as called for in this act?

4. Did DOE or Western prepare as of March 31, 1992, an annual report or statement of financial operations in compliance with the Act? If so, what was the status of this financial statement; how does it fit with the PRS?

5. How does this report fit with CRSP accounting mechanisms? Will this financial statement ever be audited apart from whatever audits Western conducts?

6. What procedures and plans, if any, does Western have to relieve accountable officials from liability under this Act? Has Western taken steps for relief of financial liability.

Response:

This comment is outside the scope of this rate adjustment.

1. To implement the Act, Western has implemented the requirements of DOE Secretarial Order SEN–34–91 dated August 15, 1991.

2. Yes, Western's CFO is Richard Redenius, the Assistant Administrator for Management.

3. Yes, Western prepared a 5-year financial management system plan.

4. Yes, Western prepared an unaudited annual report for FY 1991 which included the combined power-related activities of the generating agencies. The annual report supplemental schedule (each project) balances are reconciled to the corresponding balances in the respective PRS.

5. The financial statement presentation for CRSP is the same as for other projects. The combined financial statement for FY 1991 was audited by a independent certified public accounting firm and received an unqualified opinion.

6. The CFO Act does not change Western's liability. It does increase Western's responsibility. The relief process is not changed by this Act. It remains as included in Title 7 of GAO's "Policy and Procedures Manual for Guidance of Federal Agencies."

10. Miscellaneous

Comment 10.1: Reclamation is distanced from the anger vented by paying customers and is no longer sensitive to the needs of the CRSP distribution systems. Separation of Reclamation and Western did not accomplish efficiencies. The time has come to reunite Reclamation and Western.

Response: This comment is outside the scope of this rate adjustment. Reclamation is actively participating in Western's ratemaking process. CREDA now has the opportunity for financial reviews of both Western and Reclamation budgets and thus has an input on the budgets to be prepared.

Comment 10.2: The rate brochure should have explained each element of revenue requirement that was included or excluded and explained generation estimates. Then revenue requirements should be divided by generation. Finally, the revenue requirements should be used to design the rate.

Response: This procedure has been followed with the October 1991 Customer Brochure and its March 1992 Addendum and the respective PRSs. Revenue requirements divided by available resources are always used to compute Western's firm power rates.

Comment 10.3: Western deliberately set rates too low in the past.

Response: Each year Western prepares a PRS to determine if revenues are sufficient to pay annual costs and to repay the Federal investment associated with the project. Western is mandated to seek the "lowest possible rate using sound business principles," and strives to meet this requirement.

Comment 10.4: The rate study capitalizes deficits during the cost evaluation period. This in contrary to DOE RA 6120.2 which does not allow for deficits.

Response: The rate order PRS does not generate deficits after FY 1992. DOE RA 6120.2 states that the current rates for a power system will be adequate if the expected revenues are at lest sufficient to recover annual cost, except for a possible initial short transition period. It also states that the recovery of the annual short transition period. It also states that the recovery of the annual interest expense may be deferred in unusual circumstances for short periods of time.

Comment 10.5: Smaller customers should be considered in the Interim Purchases Amendment.

Response: All customers are given the opportunity to enter into the IPA. Those who choose not to enter into the IPA will have a purchased power adjustment included in their rate schedule as noted in Rate Schedule SLIP–F4. This means that customers who choose not to purchase their own power will be served by Western's purchases and will be billed accordingly.

Comment 10.6: The following comments were made on economic impacts:

1. Rate increase hard on retired persons.

2. Rate increase will hit farmers hard.

3. Cannot absorb further rate increases.

4. Cost increases are undermining the economic base of our service area.

5. The Integrated Projects rate is approaching the level of alternate sources of electrical power.

Response: Western is concerned about the impacts to customer and has implemented a cost containment initiative to control Westerns costs. However, Western is also required by law to recover the costs assigned to power to be repaid during the prescribed time period.

Comment 10.7: Western failed to account for the FERC-ordered PacifiCorp refund.

Response: Although FERC ordered PacifiCorp to make a refund to Western (FERC Docket No. ER91–494–0000 and ER91–471–0000, issued April 24, 1992), there is a rehearing request pending on that order and a settlement proposal pending. Western cannot include the refund in the PRS until either settlement has been reached and actual refunds are made to Western or a new ruling is issued upon rehearing. The effect of this refund, if any, will be included in the next rate process after the refund is received.

Comment 10.8: The negative conditions caused by regulating the flow of Glen Canyon Dam far outweigh the positive ones.

Response: The Glen Canyon EIS will assess the benefits and costs of the several alternative operating criteria at Glen Canyon Dam.

Environmental Evaluation: In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* Council on Environmental Quality Regulations (40 CFR part 1500–1508); and DOE NEPA Regulations (10 CFR part 1021). Western has determined that this action is categorically excluded from the preparation of an environmental assessment or EIS.

Executive Order 12291: DOE has determined that this rate action is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that order, and therefore will not prepare a regulatory impact statement.

Availability of Information: Information regarding this rate adjustment, including PRSs, comments letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Salt Lake City Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 257 East 200 South, suite 475, Salt Lake City, Utah 84111; Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, Colorado 80401; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, room 8G–061, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission: The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted

to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective October 1, 1992, Rate Schedules SLIP–F4 and SP–FT4. The rate schedules will remain in effect on an interim basis, pending FERC confirmation and approval of them or substitute rates on a final basis, through September 30, 1996.

Issued in Washington, DC, August 10, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Rate Schedule SLIP–F4 (Supersedes Schedule SLIP–F3)

United States Department of Energy
Western Area Power Administration

Salt Lake City Area Integrated Projects, Arizona, Colorado, Nevada, New Mexico, Utah, Wyoming

Schedule of Rate for Firm Power Service

Effective: Beginning October 1, 1992, and extending through September 30, 1996.

Available: In the area served by the Salt Lake City Area Integrated Projects.

Applicable: To wholesale power customers for firm power service supplied through one meter at one point of delivery, or as otherwise established by contract.

Character: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate: Demand Charge: $3.63 per kilowatt of billing demand. Energy Charge: $8.6 mills per kilowatthour if use.

Billing Demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Adjustment for Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

Adjustment for Power Factor: The customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

Adjustment for Purchased Power: Purpose of Adjustment: The purpose of this purchased power adjustment is to ensure that Western has sufficient revenues to support firm capacity purchases made necessary becaue of restricted generation from Glen Canyon Dam as the result of restrictions on water releases from the dam.

Applicability: This adjustment is applicable to those contractors that are not receiving service under an Interim Purchase Amendment to their firm power sales contract.

Adjustment: If Western Area Power Administration (Western) finds it necessary to purchase firm capacity to replace generation lost at Glen Canyon Dam because of the above-listed restrictions, Western will, beginning on the first month that such purchases are made, include in the contractor's monthly power bill an estimate of that contractor's proportionate share of net capacity purchase costs. The cost of purchasing such capacity will be offset by the revenue that Western receives from the sale of energy, if any, associated with the purchased capacity.

In its October bill each year, Western will reconcile the previous fiscal year actual purchased power expenses and the monthly estimated costs paid by the contractor. If the contractor has paid more than its proportionate share of actual power purchase expenses, the excess amount will be shown as a credit to the contractor's October power bill. If the contractor has paid less than its proportionate share of actual power purchase expenses, Western will add such amount to the contractor's October power bill.

Notification: If Western finds it necessary to implement this adjustment, it will give a one-time notification to the contractor and the Federal Energy Regulatory Commission at least 10 days before initially adding purchased power costs to the contractor's monthly power bill.

United States Department of Energy
Western Area Power Administration

Colorado River Storage Project, Arizona, Colorado, New Mexico, Wyoming, Utah

Schedule of Rate for Firm Transmission Service

Effective: Beginning on October 1, 1992, and extending through September 30, 1996.

Available: In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable: To firm transmission service customers for which power and energy are supplied to the CRSP transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the CRSP transmission system established by contract.

Character and Conditions of Service: Transmission service for alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Rate: Transmission service charge: $22.68 per kilowatt-year for each kilowatt of transmission service contracted for, payable monthly at the rate of $1.89 per kilowatt-month.

Requirements for Reactive Power: Requirements for reactive power shall be as established by contract; otherwise, there shall be no entitlement to transfer of reactive kilovolt amperes at delivery points except when such transfers may be mutually agreed upon by the contractor and the contracting officer or their authorized representatives.

Adjustments for Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer as established by contract.

[FR Doc. 92–19536 Filed 8–14–92; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42166; FRL–4082–5]

Testing Consent Agreement Development for Refractory Ceramic Fibers; Solicitation of Interested Parties and Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's procedures for requiring the testing of chemical substances and mixtures under section 4 of the Toxic Substances Control Act (TSCA) include the adoption of enforceable consent agreements (ECAs) and promulgation of test rules. ECAs may be adopted where consensus on an industry test program is reached in a timely manner by EPA, affected manufacturers and/or processors, and other interested parties. If timely consensus cannot be reached or appears unlikely, and the Agency is able to make the statutory finding as required under TSCA, then EPA would issue a section 4 test rule. This notice serves three purposes under these procedures. First, it requests interested persons who wish to participate in exposure testing negotiations for Refractory Ceramic

Fibers (RCF) to identify themselves to EPA. Second, it announces a public meeting to initiate testing negotiations for this chemical. Third, it proposes a target schedule for implementation of the consent agreement process.

DATES: A public meeting will be held on September 2, 1992, at 1 p.m.

ADDRESSES: Submit written comments, in triplicate, identified by the docket number OPTS–42166, by mail to: TSCA Public Docket Office (TS–793), rm. NE–G004, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, before August 28, 1992.

Persons interested in attending the public meeting should notify EPA by writing Mark Henshall (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, FAX 202–260–1216, on or before August 28, 1992

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: The regulations at 40 CFR part 790 (51 FR 23706; June 10, 1986), establish procedures for using ECAs to develop testing requirements under section 4 of TSCA.

I. Background

On November 21, 1991, the Agency concluded that based on the preliminary hazard and exposure information available, that in accordance with section 4(f) of TSCA, there may be a reasonable basis to conclude that RCFs present or will present a significant risk of serious harm to human beings from cancer. Given the Agency's concern over RCF exposures, EPA is interested in establishing an exposure testing program with the manufacturers of RCF to monitor workplace exposures throughout the lifecycle of the chemical (i.e., manufacturing, fabrication, processing, installation, and removal).

II. Identification of Interested Parties

Under 40 CFR 790.22, the testing negotiation procedures are initiated by the publication of a **Federal Register** notice which invites persons interested in participating in or monitoring negotiations for the development of an ECA to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in this notice will have the status of "interested parties" and will be afforded the opportunity to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties." The procedures for these negotiations are described in 40 CFR 790.22.

III. Public Meeting

A public meeting will be held on Wednesday, September 2, 1992, at 1 p.m. at the Washington Information Center (WIC), rm. 1, EPA Headquarters, 401 M St., SW., Washington DC 20460. EPA will announce its preliminary requirements for RCF exposure monitoring. Individuals and groups desiring to have the status of "interested parties" in the development of the ECA for RCF should submit a written request to the Agency at the address given above on or before August 28, 1992.

IV. Timetable for Negotiating Test Agreements

In accordance with the procedures for the development of ECAs established in 40 CFR 790.22, EPA intends to follow the schedule set forth below to conduct negotiations and develop a consent agreement for exposure monitoring of RCF.

August 28, 1992—Deadline for notice of "interested parties" designation.

September 2, 1992—Public Meeting to initiate testing.

September 16, 1992—December 1, 1992 - Negotiations

December 18, 1992—Decision by EPA on whether to use consent order to test rule.

January 11, 1993—Draft Consent order sent to interested parties (if EPA decides to use consent order).

April 19, 1993—Consent order published in the **Federal Register**.

Dated: August 5, 1992.

Linda Vlier Moos,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–19522 Filed 8–14–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Travel Reimbursement Program, April 1, 1992–June 30, 1992; Summary Report

Total Number of Sponsored Events	21
Total Number of Sponsoring Organizations	18
Total Number of Different Commissioners/Employees Attending	40
Total Amount of Reimbursement Expected:	
Transportation	$23,061.93
Subsistence	19,607.33
Other Expenses	3,862.29
Total	$46,531.55

Travel Reimbursement Program Individual Event Report

Sponsoring Organization: Association of National Advertisers, Inc., 1725 K Street, NW., Washington, DC 20006.

Date of the Event: May 20, 1992.

Description of the Event: A.N.A.'s Television Advertising Committee, New York, New York.

Commissioners Attending: None.

Other Employees Attending: Robert L. Pettit—General Counsel.

Amount of Reimbursement:

Transportation	$118.00
Subsistence	34.00
Other Expenses	93.50
Total	245.50

Sponsoring Organization: Bell Atlantic Network Services Inc., 1133 20th Street, NW., Suite 810, Washington, DC 20036.

Date of the Event: April 27–30, 1992.

Description of the Event: 1992 Regional Accounting Witness Meeting, San Antonio, Texas.

Commissioners Attending: None.

Other Employees Attending: Kenneth Ackerman—Accounting and Audits Division.

Amount of Reimbursement:

Transportation	$415.15
Subsistence	86.75
Other Expenses	42.90
Total	544.80

Sponsoring Organization: Honorable Fred Grandy, United States House of Representatives, Washington, DC 20515.

Date of the Event: April 27, 1992.

Description of the Event: Cable Legislation Roundtable Discussion, Fort Dodge, Iowa.

Commissioners Attending: None.

Other Employees Attending: Doug Webbink—Chief, Policy and Rules Division, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$715.00
Subsistence	90.50
Other Expenses	27.25
Total	832.75

Sponsoring Organization: Federal Communications Bar Association, 1150 Connecticut Avenue, NW., Suite 1050, Washington, DC 20036.
Date of the Event: May 8–10, 1992.
Description of the Event: FCBA's Annual Seminar, Williamsburg, Virginia.
Commissioners Attending:
Commissioner Ervin S. Duggan.
Other Employees Attending:
Terry L. Haines—Chief of Staff, Office of the Chairman
Robert L. Pettit—General Counsel
Linda Townsend Solheim—Director, Legislative Affairs
Amount of Reimbursement:

Transportation	$.00
Subsistence	459.00
Other Expenses	282.75
Total	741.75

Sponsoring Organization: Communications Fraud Control Association, 2033 M Street, NW., suit 402, Washington, DC 20036.
Date of the Event: June 23–26, 1992.
Description of the Event: Annual International Conference, Seattle, Washington.
Commissioners Attending: None.
Other Employees Attending: Gerald P. Vaughan—Deputy Chief, Operations, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$364.00
Subsistence	273.94
Other Expenses	25.50
Total	663.44

Sponsoring Organization: Posts and Telecommunications International Japan, c/o Embassy of Japan, 2520 Massachusetts Avenue, NW., Washington, DC 20008.
Date of the Event: June 11, 1992.
Description of the Event: Conference Entitled "Global Symposium in Telecommunications", Tokyo, Japan.
Commissioners Attending: None.
Other Employees Attending: John P. Copes—Attorney, International Policy Division, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$1,172.00
Subsistence	1,064.00
Other Expenses	100.00
Total	2,336.00

Sponsoring Organization: Interexchange Resellers Association, P.O. Box 5090, Hoboken, New Jersey 07030.
Date of the Event: May 27–28,1992.
Description of the Event: 1992 Spring Conference, San Diego, California.
Commissioners Attending: None.
Other Employees Attending: Madelon Kuchera—Legal Advisor, Commissioner Barrett.
Amount of Reimbursement:

Transportation	$356.00
Subsistence	184.00
Other Expenses	45.00
Total	585.00

Sponsoring Organization: National Association of Broadcasters, Regulatory Affairs, 1771 N Street, NW., Washington, DC 20036.
Date of the Event: April 12–16, 1992.
Description of the Event: NAB Convention, Las Vegas, Nevada.
Commissioners Attending:
Chairman Alfred C. Sikes
Commissioner Andrew C. Barrett
Commissioner Ervin S. Duggan
Commissioner Sherrie P. Marshall
Commissioner James H. Quello
Other Employees Attending:
Robert Corn-Revere—Legal Advisor, to Commissioner Quello
Michele C. Farquhar—Senior Legal Advisor, to Commissioner Duggan
Brian F. Fontes—Special Advisor, to Commissioner Quello
Milton O. Gross—Chief, Fairness/ Political Programming, Mass Media
Terry L. Haines—Chief of Staff, Office of the Chairman
William H. Hassinger—Ass't. Chief Engr., Mass Media
John C. Hollar—Legal Advisor, to Commissioner Duggan
Charles W. Kelley—Chief, Enforcement Division Mass Media Bureau
Byron F. Marchant—Legal Advisor, to Commissioner Barrett
John W. Reiser—Electronics Engineer, Mass Media Bureau
Other Employees Attending:
Peter D. Ross—Senior Advisor, to Commissioner Marshall
Richard M. Smith—Chief, Field Operations Bureau
Roy J. Stewart—Chief, Mass Media Bureau
Alexandra Wilson—Legal Advisor, to Chairman Sikes
Amount of Reimbursement:

Transportation	$6,665.88
Subsistence	7,110.66
Other Expenses	1,376.89
Total	15,153.43

Sponsoring Organization: National Association of Broadcasters, 1771 N Street, NW., Washington, DC 20036.
Date of the Event: June 10–13, 1992.
Description of the Event: NAB Radio Montreux, Montreux, Switzerland.
Commissioners Attending:
Commissioner Ervin S. Duggan.
Other Employees Attending: None.
Amount of Reimbursement:

Transportation	$746.00
Subsistence	1,014.00
Other Expenses	61.00
Total	1,821.00

Sponsoring Organization: North American National Broadcasters Association, 1500 Bronson Avenue, Ottawa, Ontario Canada K1G 3J5.
Date of the Event: April 27–30, 1992.
Description of the Event: 7th World Conference of Broadcasting Unions, Mexico City, Mexico.
Commissioners Attending: None.
Other Employees Attending: Walda Roseman—Director, Office of International Communications.
Amount of Reimbursement:

Transportation	$521.50
Subsistence	701.25
Other Expenses	65.39
Total	1,288.14

Sponsoring Organization: United States Telephone Association, 900 19th Street, NW., suite 800, Washington, DC 20008.
Date of the Event: June 21–25, 1992.
Description of the Event: NARUC Engineers Conference, Phoenix, Arizona.
Commissioners Attending: None.
Other Employees Attending: Fatina Franklin–Chief, Depreciation Rates Branch, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$356.00
Subsistence	203.80
Other Expenses	153.75
Total	713.55

Sponsoring Organization: National Cable Television Association, 1724 Massachusetts Avenue NW., Washington, DC 20036.
Date of the Event: May 3–6, 1992.
Description of the Event: 41st Annual Convention and Exposition, Dallas, Texas.
Commissioners Attending:
Chairman Alfred C. Sikes
Commissioner Ervin S. Duggan
Commissioner Sherrie P. Marshall

Other Employees Attending:
Robert Corn-Revere—Legal Advisor, to Commissioner Quello
Terry L. Haines—Chief of Staff, to Chairman Sikes
John C. Hollar—Legal Advisor, to Commissioner Duggan
William H. Johnson—Deputy Chief, Mass Media Bureau
Byron F. Marchant—Legal Advisor, to Commissioner Barrett
Ronald Parver—Chief, Cable Television Branch Mass Media Bureau
Robert M. Pepper—Chief, Plans and Policy
Robert L. Pettit—General Counsel
Peter D. Ross—Legal Advisor, to Commissioner Marshall
Lorrie A. Secrest—Director, Public Affairs
Richard M. Smith—Chief, Field Operations Bureau
Linda Townsend Solheim—Director, Legislative Affairs
Other Employees Attending:
Thomas P. Stanley—Chief Engineer, Office of Engineering and Technology
Roy J. Stewart—Chief, Mass Media Bureau
Alexandra Wilson—Legal Advisor, Chairman Sikes
John P. Wong—Supervisor Electronics Engineer, Mass Media Bureau
Amount of Reimbursement:

Transportation	$7,555.00
Subsistence	5,248.95
Other Expenses	848.62
Total	13,652.57

Sponsoring Organization: Society of Cable Television Engineers, 669 Exton Commons, Exton, Pennsylvania 19341.
Date of the Event: June 15–17, 1992.
Description of the Event: Program Committee for Cable-Tec Expo '92, San Antonio, Texas.
Commissioners Attending: None.
Other Employees Attending:
Michael L. Lance—Mass Media Bureau
John P. Wong—Mass Media Burea
Amount of Reimbursement:

Transportation	$504.00
Subsistence	1,194.00
Other Expenses	181.58
Total	1,879.58

Sponsoring Organization: Telephony Magazines, 55 East Jackson Boulevard, Chicago, Illinois 60604.
Date of the Event: May 11–13, 1992.
Description of the Event: SS7 Summit, Chicago, Illinois.
Commissioners Attending: Chairman Alfred C. Sikes.
Other Employees Attending: None.
Amount of Reimbursement:

Transportation	$189.00
Subsistence	152.23
Other Expenses	13.80
Total	355.03

Sponsoring Organization: Technology Marketing Corporation, One Technology Plaza, Norwalk, Connecticut 06854.
Date of the Event: June 11, 1992.
Description of the Event: TBT Spring '92, Chicago, Illinois.
Commissioners Attending: None.
Other Employees Attending: Terry L. Haines—Chief of Staff, to Chairman Sikes.
Amount of Reimbursement:

Transportation	$378.00
Subsistence	143.50
Other Expenses	2.37
Total	523.87

Sponsoring Organization:
Telestrategies Inc., 1355 Beverly Road, suite 100, McLean, Virginia 22101.
Date of the Event: April 14–15, 1992.
Description of the Event: International Resale Conference, East Rutherford, New Jersey.
Commissioners Attending: None.
Other Employees Attending: William Kirsch—Deputy Assistant Chief, International, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$128.00
Subsistence	250.50
Other Expenses	44.25
Total	422.75

Sponsoring Organization: United States Telephone Association, C/o Robert Creighton, 900 19th Street NW., suite 800, Washington, DC 20006.
Date of the Event: June 15–18, 1992.
Description of the Event: Three-Way Depreciation Meeting, Denver, Colorado.
Commissioners Attending: None.
Other Employees Attending: Bryan Clopton—Depreciation Rates Branch, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$302.00
Subsistence	425.50
Other Expenses	39.09
Total	766.59

Sponsoring Organization: United States Telephone Association, c/o Robert Creighton, 900 19th Street NW., suite 800, Washington, DC 20006.
Date of the Event: June 1–4, 1992.
Description of the Event: Three-Way Depreciation Meeting, Charlotte, North Carolina.
Commissioners Attending: None.
Other Employees Attending: Fatina Franklin—Chief, Depreciation Rates Branch, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$380.00
Subsistence	280.00
Other Expenses	24.75
Total	684.75

Sponsoring Organization: Utilities Telecommunications Council, 1140 Connecticut Avenue, NW., suite 1140, Washington, DC 20036.
Date of the Event: June 23–25, 1992.
Description of the Event: Annual Meeting, Phoenix, Arizona.
Commissioners Attending: None.
Other Employees Attending:
Beverly G. Baker—Deputy Chief, Private Radio Bureau
Micheal B. Hayden—Chief, Microwave Branch Private Radio Bureau
Thomas P. Stanley—Chief Engineer, Office of Engineering and Technology
Amount of Reimbursement:

Transportation	$927.00
Subsistence	148.10
Other Expenses	207.75
Total	1,282.85

Sponsoring Organization: Viacom Entertainment, 1515 Broadway, New York, New York 10036.
Date of the Event: April 30, 1992
Description of the Event: Joint Viacom Strategic Meetings, Naples, Florida.
Commissioners Attending: None.
Other Employees Attending: Terry L. Haines—Chief of Staff, to the Chairman Sikes.
Amount of Reimbursement:

Transportation	$352.00
Subsistence	197.05
Other Expenses	137.75
Total	686.80

Sponsoring Organization:
Wissenschaftliches Institut fur Kommunikationsdienste GmbH, Postfach 2000, 5340 Bad Honnef 1, Bonn, Germany.
Date of the Event: June 23–24, 1992.
Description of the Event: International Conference on "Three Years after Liberalization Telecommunications Markets in Germany", Bonn, Germany.
Commissioners Attending: None.

Other Employees Attending: Kenneth Robinson—Senior Advisor, to Chairman Sikes.

Amount of Reimbursement:

Transportation	$917.40
Subsistence	345.60
Other Expenses	88.40
Total	1,351.40

Federal Communications Commission
Donna R. Searcy,
Secretary.
[FR Doc. 92-19504 Filed 8-14-92; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 92-606]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR part 936) that were published in the **Federal Register** on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the third quarter review under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date For Member Community Support Statements for Members Selected in Third Quarter Review:* September 30, 1992.

Due Date For Public Comments on Members Selected in Third Quarter Review: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate (202) 408-2825, or Kathleen S. Brueger, Associate Director, Housing Finance Directorate (202) 408-2821, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board intends to review the entire FHLBank System membership once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. Only members with post-July 1, 1990 CRA Evaluations and members not subject to CRA will be selected for review in the first two years following the effective date of the regulation. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members to be Reviewed in Third Quarter 1992, Grouped by FHLBank District

Member	City	State
Federal Home Loan Bank of Boston—District 1, Post Office Box 9106, Boston, Massachusetts 02205-9106.		
Old Stone Bank of CA, a FSB.	Hayward	CA
Great Country Bank	Ansonia	CT
Collinsville Savings Society.	Collinsville	CT
First New London S&LA, Inc.	New London	CT
Norwalk Savings Society	Norwalk	CT
Eastern S&LA	Norwich	CT
Southington Savings Bank.	Southington	CT
The Equity Bank	Wethersfield	CT
Northwest Bank for Savings.	Winsted	CT
Andover Bank	Andover	MA
Roxbury-Highland Cooperative Bank.	Jamaica Plain	MA
The Massachusetts Co., Inc..	Boston	MA
Brookline Savings Bank	Brookline	MA
The Bank of Canton/Canton Institution for Savings.	Canton	MA
Charlestown Co-operative Bank.	Charlestown	MA
Danvers Savings Bank	Danvers	MA
First FSB of America	Fall River	MA
Lafayette FSB	Fall River	MA
Haverhill Co-op Bank	Haverhill	MA
Milford FS&LA	Milford	MA
Pemigewasset National Bank.	Plymouth	MA
Plymouth Five Cents Savings Bank.	Plymouth	MA
Revere FS&LA	Revere	MA
Bangor Savings Bank	Bangor	ME
Bar Harbor S&LA	Bar Harbor	ME
Bar Harbor Banking and Trust Co.	Bar Harbor	ME
Bethel Savings Bank, FSB.	Bethel	ME
Calais FS&LA	Calais	ME
First Citizens Bank	Presque Isle	ME
Rockland S&LA	Rockland	ME
The Waldoboro Bank, FSB.	Waldoboro	ME
Centerpoint Bank	Bedford	NH
Cornerstone Bank	Derry	NH
First S&LA of NH	Exeter	NH
Milford Co-Op Bank	Milford	NH
First National Bank of Portsmouth.	Portsmouth	NH
Newport S&LA	Newport	RI
Citizens Savings Bank	Providence	RI
Westerly Savings Bank	Westerly	RI
Bank of Vermont	Burlington	VT
Union Bank	Morrisville	VT
Federal Home Loan Bank of New York—District 2, One World Trade Center, 103d Floor, New York, New York 10048.		
Bogota S&LA	Bogota	NJ
Somerset Savings Bank, SLA.	Bound Brook	NJ
Century FS&LA of Bridgeton.	Bridgeton	NJ
United Roosevelt S&LA	Carteret	NJ
Valley Savings Bank	Closter	NJ
NVE Savings Bank, SLA	Englewood	NJ
Premium FSB	Gibbsboro	NJ
Glen Rock Savings Bank, SLA.	Glen Rock	NJ
Haddon S&LA	Haddon Heights.	NJ
Statewide Savings Bank, SLA.	Jersey City	NJ
Monarch Savings Bank, FSB.	Kearny	NJ
Lincoln Park S&LA	Lincoln Park	NJ
Metuchen S&LA	Metuchen	NJ
Roselle S&LA	Roselle	NJ
Boiling Springs S&LA	Rutherford	NJ
Gloucester County FSB	Sewell	NJ
Roma FSB	Trenton	NJ
South Jersey S&LA	Turnersville	NJ
Lehigh Savings Bank, SLA.	Union	NJ
Security Savings Bank, SLA.	Vineland	NJ
The Westwood Savings Bank, SLA.	Westwood	NJ
Elmira Savings Bank	Elmira	NY
First FS&LA of Middletown.	Middletown	NY
American S&LA	New York	NY
Chinatown FSB	New York	NY
Pioneer S&LA	Roslyn	NY
Wallkill Valley FS&LA	Wallkill	NY
Oriental Federal Savings Bank.	Humaco	PR
Federal Home Loan Bank of Pittsburgh—District 3, 625 West Ridge Pike, Suite B-107, Conshohocken, Pennsylvania 19428.		
Bernville Bank, N.A	Bernville	PA
Union B&LA	Beaver	PA
Pennsylvania State Bank.	Camp Hill	PA
Farmers Trust Company	Carlisle	PA
First FS&LA of Carnegie	Carnegie	PA

Member	City	State
Unitas National Bank	Chambersburg	PA
Slovenian S&LA of Franklin-Conemaugh.	Conemaugh	PA
People's National Bank of Susquehanna County.	Hallstead	PA
Mifflinburg Bank and Trust Co..	Mifflinburg	PA
Community Banks, N.A.	Millersburg	PA
New Bethlehem Bank	New Bethlehem.	PA
Polonia FS&LA	Philadelphia	PA
Republic Bank	Philadelphia	PA
Pittsburgh Home Savings Ass.	Pittsburgh	PA
Slovak S&LA	Pittsburgh	PA
Pennsylvania National Bank & Trust Co.	Pottsville	PA
Century National Bank and Trust Company.	Rochester	PA
Schuylkill Haven Trust Company.	Schuylkill Haven.	PA
Merchants National Bank of Shenandoah.	Shenandoah	PA
Northern Central Bank	Williamsport	PA
Peoples State Bank of Wyalusing.	Wyalusing	PA
The Drovers & Mechanics Bank.	York	PA
York FS&LA	York	PA
The Charleston National Bank.	Charleston	WV
Community Bank & Trust, N.A.	Fairmont	WV
First National Bank in Fairmont.	Fairmont	WV
United National Bank-Central.	Glenville	WV
Old National Bank	Martinsburg	WV
Citizens Bank of Morgantown.	Morgantown	WV
Advance Financial Savings Bank, FSB.	Wellsburg	WV

Federal Home Loan Bank of Atlanta—District 4, Post Office Box 105565, Atlanta, Georgia 30348.

SouthTrust Bank of Alabama, N.A.	Birmingham	AL
First FS&LA of Dekalb County.	Fort Payne	AL
First FSB of DeFuniak Springs.	DeFuniak Springs.	FL
Charter S&LA of Florida	Delray Beach	FL
Destin Bank	Destin	FL
Unifirst Federal Savings Bank.	Hollywood	FL
First FS&LA of Osceola County.	Kissimmee	FL
Eagle National Bank of Miami.	Miami	FL
Murdock Savings Bank	Murdock	FL
First National Bank of Naples.	Naples	FL
Turnberry S&LA	North Miami Beach.	FL
Lochaven Federal S&LA	Orlando	FL
Flamingo Bank	Pembroke Pines.	FL
Presidential Bank, a State SB.	Sarasota	FL
First Florida Bank, N.A	Tampa	FL
Indian River FSB	Vero Beach	FL
Allatoona FSB	Acworth	GA
Bank of Adairsville	Adairsville	GA
Metro Bank	Atlanta	GA
Bainbridge National Bank.	Bainbridge	GA
First FSB of Bainbridge	Bainbridge	GA
Baxley FSB	Baxley	GA
First Federal Savings Bank.	Calhoun	GA
Cherokee Federal Bank, FSB.	Canton	GA
Douglas Federal Bank a FSB.	Douglasville	GA
Elberton FS&LA	Elberton	GA
Liberty Savings Bank, FSB.	Macon	GA
Mountain National Bank	Tucker	GA
Advance FS&LA	Baltimore	MD
Belmar FS&LA	Baltimore	MD
Hamilton FS&LA	Baltimore	MD
Leeds FS&LA	Baltimore	MD
Madison and Bradford FS&LA.	Baltimore	MD
Westview FS&LA	Baltimore	MD
Presidential Savings Bank, FSB.	Bethesda	MD
First Security FSB	Chevy Chase	MD
Laurel FSB	Laurel	MD
Baltimore Cty. Savings Bank, FSB.	Perry Hall	MD
Baltimore S&LA, F.A.	Pikesville	MD
Reisterstown FSB	Reisterstown	MD
American Federal Savings Bank.	Rockville	MD
First Shore FS&LA	Salisbury	MD
Ashburton FS&LA	Westminster	MD
Cowenton FS&LA	White Marsh	MD
Orange FS&LA	Chapel Hill	NC
Clyde Savings Bank	Clyde	NC
Gaston FS&LA	Gastonia	NC
First Carolina FSB	Kings Mountain	NC
Home Federal Savings Bank.	Kings Mountain	NC
Scotland S&LA	Laurinburg	NC
Progressive S&LA, Ltd	Lumberton	NC
Mooresville FS&LA	Mooresville	NC
Roxboro S&LA	Roxboro	NC
Western Carolina S&LA	Valdese	NC
Haywood S&LA, Inc	Waynesville	NC
Perpetual FSB	Anderson	SC
Spratt S&LA	Chester	SC
Atlantic Savings Bank, FSB.	Hilton Head Island.	SC
Heritage FS&LA	Laurens	SC
Coastal FSB	Myrtle Beach	SC
Home FS&LA of South Carolina.	Rock Hill	SC
Oconee S&LA	Seneca	SC
First Commonwealth Savings Bank.	Alexandria	VA
Acacia Federal Savings Bank.	Annandale	VA
Fairfax Bank and Trust Company.	Fairfax	VA
Virginia Savings Bank	Front Royal	VA
Co-operative Savings Bank, FSB.	Lynchburg	VA
First FSB of Virginia	Petersburg	VA
Regency Bank	Richmond	VA
Community FSB	Staunton	VA
Virginia Beach FSB	Virginia Beach	VA
Jefferson S&LA	Warrenton	VA

Federal Home Loan Bank of Cincinnati—District 5, Post Office Box 598, Cincinnati, Ohio 45201.

Catlettsburg FS&LA	Catlettsburg	KY
Sunrise Bank for Savings, FSB.	Fort Mitchell	KY
Harlan FS&LA	Harlan	KY
The Cumberland FSB	Louisville	KY
First FS&LA	Morehead	KY
Commonwealth Bank, FSB.	Mt. Sterling	KY
Republic Bank of Shelby County.	Shelbyville	KY
Great Northern Savings Co.	Barberton	OH
Belmont FS&LA	Bellaire	OH
First FS&LA of Wood County.	Bowling Green	OH
First FS&LA of Bucyrus	Bucyrus	OH
First FS&LA of Centerburg.	Centerburg	OH
BMF Federal Savings Bank.	Cincinnati	OH
Cherry Grove Savings Bank.	Cincinnati	OH
Cottage Savings Assoc. FA.	Cincinnati	OH
Suburban FSB	Cincinnati	OH
The Franklin S&L Co.	Cincinnati	OH
Warsaw FS&LA of Cincinnati.	Cincinnati	OH
The First FSB	Cleveland	OH
Third FS&LA of Cleveland.	Cleveland	OH
State Savings Bank	Columbus	OH
Midwest Savings Bank	De Graff	OH
Liberty Savings Bank, FSB.	Hillsboro	OH
NCB Savings Asso	Hillsboro	OH
First FSB of Kent	Kent	OH
Home S&L Co. of Kenton.	Kenton	OH
Kenwood S&LA	Kenwood	OH
First FS&LA of Lakewood.	Lakewood	OH
Fairfield FS&LA of Lancaster.	Lancaster	OH
Leesburg FS&LA	Leesburg	OH
First FS&LA of Lima	Lima	OH
South Side Savings Bank, FSB.	Lima	OH
Citizens Loan & Savings Co.	London	OH
Security FS&LA of Cleveland.	Mayfield Heights.	OH
New Carlisle FSB	New Carlisle	OH
Fidelity FS&LA	Norwood	OH
Third S&L Co	Piqua	OH
Home City FS&LA of Springfield.	Springfield	OH
1st Ohio Savings Bank, FSB.	St. Bernard	OH
Perpetual FSB	Urbana	OH
First FS&LA of Warren	Warren	OH
First FSB of Washington Ct. House.	Washington Ct. House.	OH
Jefferson Savings Bank	West Jefferson	OH
Milton FS&LA	West Milton	OH
Tennessee National Bank.	Columbia	TN
First City Bank	Murfreesboro	TN
Newport FS&LA	Newport	TN
First FS&LA of Giles Co.	Pulaski	TN

Federal Home Loan Bank of Indianapolis—District 6, P.O. Box 60, Indianapolis, IN 46205-0060.

Boonville FSB	Boonville	IN
First State Bank	Brazil	IN
Union S&LA	Connersville	IN
Union FS&LA of Crawfordsville.	Crawfordsville	IN
First FSB	Evansville	IN
Citizens SB of Frankfort	Frankfort	IN
Union FSB of Frankton	Frankton	IN
Kentland Bank	Kentland	IN
The Logansport S&LA	Logansport	IN
Home Bank, SB	Martinsville	IN
Community Bank, FSB	Michigan City	IN
Peoples Bank, FSB	Munster	IN
Mid-Southern Savings Bank.	Salem	IN
Owen County State Bank.	Spencer	IN
The Merchants NB of Terre Haute.	Terre Haute	IN
Homestead Savings Bank, FSB.	Albion	MI
LaSalle FSB	Buchanan	MI
Branch County FS&LA	Coldwater	MI

Member	City	State
Marshall Savings Bank, FSB.	Marshall	MI
Colonial Central Savings Bank, FSB.	Mount Clemens.	MI
New Buffalo Savings Bank, a FSB.	New Buffalo	MI
Citizens FSB	Port Huron	MI

Federal Home Loan Bank of Chicago—District 7, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Batavia Savings Bank, FSB.	Batavia	IL
Bradley Bank	Bradley	IL
Centralia Savings Bank, FA.	Centralia	IL
Illinois-Service FS&LA	Chicago	IL
National Security Bank	Chicago	IL
Northwestern S&LA	Chicago	IL
South Central Bank & Trust Co.	Chicago	IL
Home FS&LA of Elgin	Elgin	IL
Fairbury FS&LA	Fairbury	IL
Galena State Bank & Trust Co.	Galena	IL
Highland S&LA	Highland	IL
Fairfield S&LA	Long Grove	IL
Republic Savings Bank, FSB.	Matteson	IL
McHenry Savings Bank	McHenry	IL
The Farmers Bank	Mt. Pulaski	IL
Regency Savings Bank, FSB.	Naperville	IL
Financial Federal Trust & SB.	Olympia Fields	IL
Pekin S&LA	Pekin	IL
Homebanc, FSB	Rockford	IL
Citizens State Bank of Shipman.	Shipman	IL
Town & Country Bank of Springfield.	Springfield	IL
Tremont S&L	Tremont	IL
Northwest Federal Banking & Savings, FA.	Amery	WI
Banner Banks	Birnamwood	WI
North Shore Bank, FSB	Brookfield	WI
Anchor S&LA	Madison	WI
Peoples State Bank	Mazomanie	WI
Milton S&LA	Milton	WI
KK Federal Bank, FSB	Milwaukee	WI
Mutual Savings Bank of WI, SA.	Milwaukee	WI
Fox Cities Bank, FSB	Neenah	WI
Oshkosh S&LA	Oshkosh	WI
Federated Bank, SSB	Wauwatosa	WI

Federal Home Loan Bank of Des Moines—District 8, 907 Walnut Street, Des Moines, Iowa 50309.

Perpetual SB	Cedar Rapids	IA
Dubuque Bank & Trust Co.	Dubuque	IA
Harvest SB, FSB	Dubuque	IA
First FSB of Fort Dodge	Fort Dodge	IA
Security Bank	Marshalltown	IA
Webster City FSB	Webster City	IA
American FSB	East Grand Forks.	MN
Community FS&LA of Little Falls.	Little Falls	MN
First FSB	Morris	MN
Security Financial B&S, FSB.	St. Cloud	MN
Winona National and SB	Winona	MN
The Farmers Bank	Carrollton	MO
First Bank, a SB	Clayton	MO
Joachim S&LA	DeSoto	MO
Fulton S&LA	Fulton	MO
Southwest Bank of Hickory Co.	Hermitage	MO
Mutual Savings Bank	Jefferson City	MO
The Brookside Savings Bank, FSB.	Kansas City	MO
First Savings Bank	Mt. Vernon	MO
Progressive Ozark Bank, FSB.	Salem	MO
Central West End Bank, a FSB.	St. Louis	MO
Reliance FS&LA	St. Louis	MO

Federal Home Loan Bank of Dallas—District 9, 5605 N. MacArthur Boulevard, 9th Floor, Irving, Texas 75038.

Benton S&LA	Benton	AR
Home FS&LA	Jonesboro	AR
Newport FS&LA	Newport	AR
Grant County S&LA	Sheridan	AR
United FSB	Springdale	AR
First FS&LA of Texarkana.	Texarkana	AR
Crowley B&LA	Crowley	LA
Jefferson S&LA	Gretna	LA
Eureka Homestead Society.	New Orleans	LA
Fidelity FA	New Orleans	LA
Iberville B&LA	Plaquemine	LA
New South BFS, FSB	Batesville	MS
Grand BFS, FSB	Leakesville	MS
Home FS&LA	Meridian	MS
First FS&LA of Pascagoula.	Pascagoula	MS
Home FSB of New Mexico.	Deming	NM
Gallup FS&LA	Gallup	NM
Century Bank FSB	Santa Fe	NM
Shelby County SA	Center	TX
Henderson S&LA	Henderson	TX
Texas Trust SB, FSB	Horseshoe Bay	TX
Coastal Banc SA	Houston	TX
Sun SA	Houston	TX
Angelina S&LA	Lufkin	TX
Lufkin FS&LA	Lufkin	TX
The First NB of Palestine.	Palestine	TX
Olympic SA	Refugio	TX
First FS&LA of Tyler	Tyler	TX

Federal Home Loan Bank of Topeka—District 10, Post Office Box 176, Topeka, Kansas 66601.

The First NB of Canon City.	Canon City	CO
The Burns National bank of Durango.	Durango	CO
Colorado SB, FSB of Grand Co.	Englewood	CO
Home Federal Savings Bank.	Fort Collins	CO
Morgan County FS&LA of Fort Morgan.	Fort Morgan	CO
Vectra Bank of Lakewood.	Lakewood	CO
Colorado Federal Savings Bank.	Sterling	CO
Citizens S&LA	Leavenworth	KS
First Savings Bank, FSB	Manhattan	KS
First FS&LA of Olathe	Olathe	KS
First National Bank and Trust.	Osawatomie	KS
Commercial Federal Bank, A FSB.	Omaha	NE
American Savings Bank, A FSB.	Ada	OK
Cimmarron FS&LA	Muskogee	OK
Republic Bank of Norman.	Norman	OK
First Western FS&LA	Oklahoma City	OK
First City Bank	Tulsa	OK

Federal Home Loan Bank of San Francisco—District 11, 307 East Chapman Avenue, Orange, California 92666.

Bank of Stockdale, FSB	Bakersfield	CA
Paramount Savings Bank.	Bakersfield	CA
Union Federal Savings Bank.	Brea	CA
Fremont Bank	Fremont	CA
Inland Savings and Loan Asso.	Hemet	CA
Long Beach Bank, SSB	Long Beach	CA
Metrobank	Los Angeles	CA
The Vintage Bank	Napa	CA
American Liberty Bank, SSB.	Oakland	CA
Great Pacific Bank, SSB	Pacifica	CA
Redlands FS&LA	Redlands	CA
Bay Cities National Bank	Redondo Beach.	CA
Summit Savings	Rohnert Park	CA
Great American Bank, a FSB.	San Diego	CA
Lake S&LA	San Francisco	CA
National Bank of Southern CA.	Santa Ana	CA
Bank of Walnut Creek	Walnut Creek	CA
Watsonville FS&LA	Watsonville	CA
American Federal Savings Bank.	Reno	NV
Home Federal Bank, SB	Reno	NV

Federal Home Loan Bank of Seattle—District 12, 1501 4th Avenue, Seattle, Washington 98101-1693.

Northrim Bank	Anchorage	AL
Guam Savings and Loan Asso.	Agana	GU
Finance Factors, Ltd	Honolulu	HI
American Bank of Commerce.	Boise	ID
First FSB of Twin Falls	Twin Falls	ID
Pioneer Federal S&LA	Deer Lodge	MT
United Savings Bank, F.A.	Great Falls	MT
Pacific Continental Bank	Eugene	OR
First FS&LA of McMinnville.	McMinnville	OR
Douglas National Bank	Roseburg	OR
Odgen First FS&LA	Odgen	UT
Home Credit Bank	Salt Lake City	UT
Columbia Savings Bank, a FSB.	Longview	WA
Continental Savings Bank.	Seattle	WA
Olympia Savings Bank	Seattle	WA
Washington First International Bank.	Seattle	WA

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBank no later than September 30, 1992.

All public comments concerning the Community Support performance of selected members must be submitted to the member's FHLBank no later than September 30, 1992.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each

member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actural review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public. The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

Dated: August 7, 1992.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92-19425 Filed 8-14-92; 8:45 am]

BILLING CODE 6725-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 92-45]

West Gulf Maritime Association v. the Port of Houston Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by West Gulf Maritime Association ("Complainant") against The Port of Houston Authority ("Respondent") was served August 7, 1992. Complainant alleges that Respondent has violated sections 10(b)(11) and (12) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b)(11) and (12), by entering into negotiations with Houston Deepwater, Inc. and excluding other potential lessees or operators of a terminal facility sometimes called Omniport Terminal, and by adopting a resolution authorizing the entering into of a lease under which wharfage is not paid in the manner as other users of Respondent's terminal facilities.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by August 9, 1993, and the final decision of the Commission shall be issued by December 7, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 92-19474 Filed 8-14-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3386]

Pyraponic Industries II, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a San Diego-based company and its owner from making false or unsubstantiated representations that the Phototron indoor greenhouse, or any air cleaning device, removes or reduces indoor air contaminants.

DATES: Complaint and Order issued July 30, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Linda Badger, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Tuesday, May 19, 1992, there was published in the **Federal Register**, 57 FR 21291, a proposed consent agreement with analysis In the Matter of Pyraponic Industries II, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 712; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-19516 Filed 8-14-92; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[File No. 911-0068]

Quality Trailer Products Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Texas manufacturer, seller, and distributor of axle products from requesting, suggesting, urging, or advocating that its competitors raise, fix or stabilize prices or price levels, or cease providing discounts. It also would prohibit the respondent from entering into agreements that would fix, raise, or stabilize prices.

DATES: Comments must be received on or before October 16, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Antalics, FTC/S-2627, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will

be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Quality Trailer Products Corporation, a corporation, hereinafter sometimes referred to as proposed respondent or "Quality Trailer Products" and it now appearing that Quality Trailer Products is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Quality Trailer Products, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Quality Trailer Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its principal place of business located at 633 Northwest Parkway, Azle, Texas and with its headquarters mailing address at P.O. Box 1349, Azle, Texas 76020.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For purposes of this order, the following definitions shall apply:

A. "Respondent" means Quality Trailer Products Corporation, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Quality Trailer products Corporation, and all their respective directors, officers, employees, agents and representatives, and all their respective successors and assigns.

B. "Axle products" means axles of any size, hubs, spindles, brakes, and any other products used in making axles.

II.

It is ordered That respondent, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any axle products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Requesting, suggesting, urging, or advocating that any other producer or seller of axle products raise, fix or stabilize prices or price levels, cease providing discounts, or engage in any other pricing action; and

B. Entering into, threatening or attempting to enter into, adhering to, maintaining, or carrying out any combination, conspiracy, agreement, understanding, plan or program with any other producer or seller of axle products to fix, raise, establish, control, maintain or stabilize prices or price levels.

Provided, That nothing in this order shall prohibit respondent from: (1) Agreeing to purchase or distribute any competitor's axle products, and (2) negotiating or agreeing upon the price under which any competitor's axle product will be purchased by respondent.

III.

It is further ordered that respondent shall:

A. Within thirty (30) days after the date on which this order becomes final, provide a copy of this order to all of its directors, officers, and management employees;

B. For a period of five (5) years after the date on which this order becomes final, and within ten (10) days after the date on which any person becomes a director, officer, or management employee of respondent provide a copy of this order to such person; and

C. Require each person to whom a copy of this order is furnished pursuant to subparagraphs III. A. and B. of this order to sign and submit to Quality Trailer Products Corporation within thirty (30) days of the receipt thereof a statement that: (1) Acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject

respondent to penalties for violation of the order.

IV.

It is further ordered That respondent shall:

A. File with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order within sixty (60) days from the date on which this order becomes final, annually thereafter for five (5) years on the anniversary date of this order, and at such other times as the Commission may by written notice to the respondent require; and

B. Notify the Commission at least thirty (30) days prior to any change in respondent such as dissolution, assignment or sale resulting in the emergency of a successor corporation, or any other change in the corporation, including the creation or dissolution of subsidiaries, that may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Quality Trailer Products Corporation, a manufacturer of trailer axles with its principal place of business located at 633 Northwest Parkway, Azle, Texas.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that two representatives of Quality Trailer Products Corporation visited one of its competitors and invited the competitor to fix prices. The complaint alleges that the invitation to collude, if accepted, would constitute an agreement in restraint of trade. The complaint further alleges that the invitation itself violates section 5 of the Federal Trade Commission Act. The challenged conduct did not relate to any proposed bona fide integration between the parties.

Quality Trailer Products Corporation has signed a consent agreement to the proposed consent order. The order prohibits Quality Trailer Products Corporation from requesting, suggesting, urging, or advocating that any other producer or seller of trailer axles raise, fix or stabilize prices or price levels, cease providing discounts, or engage in any other pricing action. The proposed consent order also prohibits Quality Trailer Products Corporation from entering into, threatening or attempting to enter into, adhering to, maintaining, or carrying out any combination, conspiracy, agreement, understanding, plan or program with any other producer or seller of axle products to fix, raise, establish, control, maintain or stabilize prices or price levels. The order's provisions apply to axle products which are defined as axles of any size, hubs, spindles, brakes, and any other products used in making axles. The order expressly does not prohibit Quality Trailer Products Corporation from agreeing to purchase or distribute any competitor's axle products or negotiating or agreeing upon the price under which any competitor's axle product will be purchased by respondent.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in Quality Trailer Products Corporation, File 911–0068

The available evidence shows that officers of Quality Trailer Products Corporation made an uninvited visit to the headquarters of a competitor and, in a face-to-face meeting with an officer of that competitor, made an unambiguous offer to fix the prices of certain products. No justification or excuse has been advanced for this conduct. In these limited circumstances, and based on evidence independent of any testimony or material within the control of the competitor who received the offer, I have voted to accept this proposed consent agreement for public comment.

Concurring Statement of Commissioner Deborah K. Owen in the Matter of Quality Trailer Products Corporation File No. 911–0068

The complaint in this matter alleges that two of respondent's representatives invited an officer of a competitor to fix prices. Specifically, they told the competitor that certain of its prices were too low and that there was "no need" for the companies to compete on price, and provided assurances that respondent would not sell below a specified price. The invitation was not accepted. The conduct did not relate to any proposed, bona fide integration between the parties.

If the alleged invitation had been accepted, it clearly would have constituted a restraint of trade. However, in this case, the invitation to collude itself—the attempt to engage in a naked price restraint—is alleged to be an unfair method of competition in violation of section 5 of the Federal Trade Commission Act. No allegation is made in the complaint as to respondent's market power.

The proposed order in this case would prohibit the respondent from: (1) Suggesting or advocating that any other producer or seller fix prices or engage in any other pricing action; and (2) entering, or attempting to enter, into any agreement with another producer or seller to fix prices. Purchasing, or negotiating the purchase of, a competitor's product is expressly not prohibited.

Enforcement actions with respect to invitations to collude on price are no longer novel. *See United States* v. *American Airlines*, 743 F.2d 1114 (5th Cir. 1984). However, the conduct in *American Airlines* was challenged as an illegal attempt to monopolize in violation of section 2 of the Sherman Act. Under section 2, proof of market power was required. Here, the complaint does not allege market power or dangerous probability of monopolization. The issue is whether Commission action is appropriate with respect to unaccepted invitations to collude on price in oligopolistic or unconcentrated markets.

Invitations to collude on price in such markets fall outside the parameters of the Sherman Act, and require invocation of section 5 of the FTC Act. Although the reach of section 5 has been argued vigorously, legislative history and case law support its extension beyond the strict purview of the Sherman and Clayton Acts, and preventing monopolization in its incipiency enjoys special recognition.[1] Nonetheless, invoking the penumbra of the antitrust laws through the use of section 5 warrants cautious analysis.[2]

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[1] For a general discussion of the scope of the statute, see Averitt, *The Meaning of "Unfair Methods of Competition" in Section 5 of the Federal Trade Commission Act*, 21 B.C.L. Rev. 227 (1980).

[2] As noted in the 1989 Report of the American Bar Association Section of Antitrust Law Special Committee to Study the Role of the Federal Trade Commission (at 20 n.11), "[a]lthough it is well established that section 5's ban on 'unfair methods of competition' permits the FTC to proscribe conduct not reached by prevailing interpretations of the Sherman and Clayton Acts, there is a debate about how far section 5 reaches beyond those Acts." The Report generally cautions that the "Commission should file a case only when it can anticipate relief that is practical, likely to remedy

Continued

With respect to oligopolistic markets, Professors Areeda and Turner have argued that "a solicitation to raise prices in concert may reduce [firms'] uncertainty, either by setting a target price or by raising confidence that rivals will follow."[3] The invitation to collude may, by its very existence, and whether or not it is accepted, facilitate pricing coordination among rivals. Areeda and Turner suggest section 5 of the FTC Act as one avenue for attacking such solicitations,[4] and the *Ethyl* case makes clear that under circumstances of "oppressive" behavior, section 5 covers certain unilateral conduct in an oligopolistic setting.[5]

Another possibility, in a market with relatively few competitors, is that in invitation to collude comes from a representative of a broader group of competitors, who are now colluding, or who wish to collude in the future. if the group is sufficiently broad, acceptance of the offer will clearly injure consumers. However, having to allege and prove some broader conspiracy or other alternative to market power can be difficult. There may be no clear, observable manifestation of such conduct, and those engaged in it will usually take precautions to avoid leaving a paper trail to any agreement.

Apparently unconcentrated markets present the most difficult cases to analyze. Nonetheless, various theories of harm from solicitations to collude in such markets have been posited. First, invitations to collude on price may cause injury even in an unconcentrated market. For instance, as the recently issued Department of Justice and Federal Trade Commission Horizontal Merger Guidelines make clear, a firm may have the ability to price discriminate as to certain customers, or within certain smaller geographic regions.[6] Under those circumstances, injury from acceptance of the invitation may be foreseeable since an apparently unconcentrated market may actually be narrower than would first seem. Furthermore, parties to the invitation may have differentiated products that are the first and second choices of certain buyers in the market, or they may share relative advantages in serving some buyers.[7] Similarly, in a given bidding situation, the potential for harm to an individual customer may exist.[8]

The question then becomes: Is it reasonable to assume from the solicitation to collude, in and of itself, that acceptance would injure consumers? Economists frequently tell us that firms do not usually engage in irrational acts. This could suggest that a party who solicits price collusion harbors some expectation that its acceptance will actually produce anticompetitive gains: why would anyone risk going to jail for price-fixing if he would not even benefit if the invitation were accepted? It may therefore be appropriate to begin with a rebuttable inference that acceptance of the solicitation would have harmed consumers. Requiring a showing of market power, or equivalent alternative, may shield attempts to reach such collusive agreements from antitrust penalties. In a sense, the offender may be given a free bite at the apple—if its solicitation is spurned, it is not subject to antitrust penalties, and if the invitation is accepted, an agreement may be consummated that presumptively harms consumers, but might never be detected.

While I find these arguments in favor of deterring invitations to collude on price compelling, it is not without a reservation. If it is objectively unlikely that the firms in question would succeed in exercising market power, or if some other theory of harm cannot be proffered, one might question whether the participants indeed anticipated any anticompetitive gains. This raises the concern that the solicitation that is being characterized as a solicitation to price-fix may in fact be something else, perhaps a solicitation to embark on a broader joint venture or some other efficient agreement. Some procompetitive joint ventures necessarily involve ancillary agreements that affect prices. Accordingly, we do not want to prohibit attempts to implement procompetitive joint activities simply because one of the terms the joint venturers must agree on is price, such as in the *BMI* situation.[9] Otherwise, we could deprive consumers of efficient new forms of marketing or new products. This consideration imposes on us a duty to ensure that the conduct involved is indeed an invitation to join in a naked price restraint, and not an efficient agreement. Thus, while an iron-clad demonstration of harm is not, in my view, a prerequisite to prosecuting a section 5 case against attempted price-fixing, the absence of potential injury compels us to check our facts on the issue of whether a pure naked restraint alone is involved.[10]

It is from this perspective that I believe we should also view the remedies in this case. Where the Commission finds reason to believe that the law has been violated, it will frequently "fence-in" the challenged conduct, prohibiting conduct that would otherwise be legal. This can ensure against future violations, facilitate enforcement of its order, and remedy any lingering effect of the violation. The order in this case, by imposing a blanket prohibition on urging any price action by a competitor, or attempting to enter into an agreement to fix prices, could be interpreted to prohibit, in addition to naked price-fixing invitations, a solicitation to enter into a procompetitive joint venture that incidentally involved the setting of prices. While such a prohibition might be acceptable in this case for fencing-in and enforcement purposes, I do not interpret this action to mean that the Commission intends to discourage solicitations to joint venture, or any other legitimate activity that may involve price discussions. Indeed, the Analysis of Proposed Consent Order to Aid Public Comment expressly notes that the facts in this case did not involve any bona fide integration, and the proviso expressly permits the discussion of prices with respect to certain sales between competitors.[11]

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the perceived harm, and not unduly burdensome", *id.* at 17, thus implying that some sort of demonstration of injury is appropriate.

[3] P. Areeda & D. Turner, 6 *Antitrust Law* 117 (1986).

[4] *Id.* at 118.

[5] *E.I. DuPont de Nemours & Co. v. FTC*, 729 F.2d 128, 139 (2d Cir. 1984).

[6] §§ 1.12 & 1.22, 5 (CCH) Trade Reg. Rep. ¶ 13,104 (Apr. 2, 1992) ("Merger Guidelines").

[7] Merger Guidelines, § 2.21.

[8] The theory behind the cases brought by the Justice Department, in which market power has not been alleged, is that the solicitation is an attempted fraud on the customer because it is "'an attempt to inflate prices [that] customers would be deceived into believing * * * were governed by market forces, not the secret agreement of competitors.'" *See*, "Report from Official Washington," Remarks of James F. Rill, Assistant Attorney General, Antitrust Division, before the 39th Annual Antitrut Spring Meeting of the Section of Antitrust Law, American Bar Association (Apr. 12, 1991), at 9 (quoting *U.S. v. Critical Industries Co.*).

[9] *Broadcast Music, Inc.* versus *Columbia Broadcasting Sys., Inc.* 441 U.S. 1 (1979). *See also National Bancard Corp.* versus *Visa, U.S.A., Inc.*, 779 F.2d 592 (11th Cir. 1986).

[10] In this case, I believe that at least one of the theories of harm applies and no bona fide, proposed integration was involved.

[11] In light of the respondent's consent to these broad prohibitions, it is fair to assume that this particular company does not anticipate any future joint venture, or joint bid activity, that would be prohibited under this Order. This would not necessarily be true of other companies, and more tailored relief might be appropriate under different facts. Furthermore, in the event that the respondent's plans change, they could petition the Commission for an order modification pursuant to 16 CFR 2.51.

In sum, I have voted in favor of this consent agreement because the facts of the case compel a conclusion that an attempt was made to engage in hard-core, price-fixing. On that basis, and because of the Commission's unique enforcement needs here, I do not interpret our action to stifle legitimate efforts to joint venture. Finally, I believe that the conduct of the respondent was not harmless.

[FR Doc. 92-19517 Filed 8-14-92; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Hanford Thyroid Morbidity Study Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Time and Date: 7 p.m.-10 p.m., September 1, 1992.

Place: Wyndham Garden Hotel, 18118 Pacific Highway South, Seattle, Washington 98188.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study. The committee will review development of the study protocol and recommend changes of scientific merit to CDC, advise on the conduct of the pilot study using the approved protocol, and assist in determining the feasibility of a full-scale epidemiologic study. If the full-scale epidemiologic study is carried out, the committee will advise CDC on the design and conduct of the study and analysis of the results.

Matters to be Discussed: The Hanford Thyroid Morbidity Study Advisory Committee will meet to discuss: (1) A summary of the workshop held May 14, 1992, on the use of screening methods for thyroid disease in populations near the Department of Energy's nuclear facilities and, (2) A proposal to add ultrasound examinations to the clinical component of the Hanford Thyroid Disease Study conducted by the Fred Hutchinson Cancer Research Center.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road NE., (F-35), Atlanta, Georgia 30333, telephone 404/488-7040.

Dated: August 11, 1992.

Robert L. Foster,

Assistant Director for Special Projects, Office of Program Support, Centers for Disease Control.

[FR Doc. 92-19497 Filed 8-14-92; 8:45 am]
BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92N-0259]

Bio-Blood Components, Inc.; Revocation of U.S. License No. 785-002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 785-002) and the product licenses issued to Bio-Blood Components, Inc., for the manufacture of Source Plasma and Source Leukocytes. The licenses were revoked for the location at 800 Travis St., Shreveport, LA. Other locations under U.S. License No. 785 were not affected by this action. In a letter to FDA dated September 18, 1991, the firm requested that its establishment and product licenses be revoked and thereby waived an opportunity for a hearing on this matter.

DATES: The revocation of the establishment license (U.S. License No. 785-002) and product licenses became effective March 16, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 785-002) and the product licenses issued to Bio-Blood Components, Inc., 800 Travis St., Shreveport, LA 71101, for the manufacture of Source Plasma and Source Leukocytes. The mailing address for Bio-Blood Components, Inc., is in care of Interstate Blood Bank, Inc., 766 West Napa St., Sonoma, CA 95476.

FDA conducted two inspections of Bio-Blood Components, Inc., between June 11 and July 26, 1991. These inspections and a concurrent investigation documented serious deviations from the applicable Federal regulations. Deviations identified during the two inspections included, but were not limited to, the following: (1) Failure to maintain a complete record from which unsuitable donors may be identified so that products from such individuals will not be distributed, in that (a) products from two donors who tested reactive for the hepatitis B surface antigen (HBsAg) were labeled as nonreactive and distributed, and (b) several products from four donors who were ineligible to donate, based on previous reactive test results for the antibody to the human immunodeficiency virus, Type 1 (anti-HIV-1), were distributed; (2) failure to maintain a complete and up-to-date donor deferral file in that a donor who previously tested reactive for HBsAg and one donor who tested reactive for anti-HIV-1 were not included on the permanent deferral list; and (3) failure to ensure that personnel were adequately trained to perform the critical steps involved in the plasmapheresis procedure in that no training documentation was on file for four current employees. In addition, FDA's investigation documented that deviations routinely occurred in areas of the plasmapheresis operation. These included: (1) The direct reinfusion into the donor of whole blood collected in excess of the maximum allowed; (2) the falsification of daily quality control records involving the refractometer, blood typing reagents, microhematocrit centrifuges, and donor scales; and (3) the falsification of training records and in the dating of donor physical records.

FDA determined that the deviations from Federal regulations were serious and constituted a danger to public health. In a letter to Bio-Blood Components, Inc., dated August 2, 1991, FDA suspended the firm's licenses. In a letter to FDA dated August 5, 1991, the firm requested that revocation of the licenses be held in abeyance. In a letter to Bio-Blood Components, Inc., dated September 10, 1991, FDA denied the firm's request that revocation of the licenses be held in abeyance, based on the seriousness and willfulness of the deficiencies outlined above and the firm's inadequate responses to those findings. In the same letter, FDA issued Bio-Blood Components, Inc., notice of FDA's intent to revoke U.S. License 785-002 and announced its intent to offer an opportunity for a hearing. In a letter to FDA dated September 18, 1991, Bio-Blood Components, Inc., voluntarily requested that its licenses be revoked and thereby waived its opportunity for a hearing. The agency granted the licensee's request by letter dated March 16, 1992, which revoked the establishment license (U.S. License No. 785-002) and the product licenses for the manufacture of Source Plasma and Source Leukocytes.

FDA has placed copies of the letters relevant to the license revocations on file, under the docket number found in brackets in the heading of this document, with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under section 351 of the Public Health Service Act (42 U.S.C. 262), 21 CFR 601.5, and under authority delegated to the Commissioner of Food and Drugs at 21 CFR 5.10 and redelegated to the Director, Center for Biologics Evaluation and Research at 21 CFR 5.68, the establishment license (U.S. License No. 785–002) and the product licenses issued to Bio-Blood Components, Inc., for the manufacture of Source Plasma and Source Leukocytes were revoked, effective March 16, 1992.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: August 6, 1992.

Gerald V. Quinnan, Jr.,

Deputy Director, Center for Biologics Evaluation and Research.

[FR Doc. 92–19502 Filed 8–14–92; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

National Toxicology Program (NTP); Public Meeting To Receive Comments on the Final Report of the Advisory Review of the NTP

A public meeting will be held on September 11, 1992, in Washington, DC, to provide opportunity for comments on the final report of the Advisory Review of the NTP by the NTP Board of Scientific Counselors on April 14 and 15, 1992. The complete report was published in the **Federal Register** (V.57, No. 138, pp. 31721–31730, Friday, July 17, 1992). The meeting will be held in the first floor auditorium of the Hubert Humphrey Building, 200 Independence Avenue SW., beginning at 9 a.m. with NTP agency scientific staff present to take public comments on the report.

The charge to the Board and the main thrust of the Report were concerned with reviewing and making recommendations to the Director, NTP, and the Program's Executive Committee on three specific issues having to do with how:

- To improve the quality of chemicals nominated for testing by assuring that they have the greatest public health significance;
- To assure that emphasis is placed on studies of the mechanisms of toxicity and carcinogenicity; and
- To develop and validate alternate assays that may reduce the need for long-term testing in animals.

A fourth issue, for which advice is being sought from the NTP Executive Committee, is concerned with how to improve the procedures for alerting regulatory agencies and the public about test results on chemicals (particularly data which suggest potential hazard to humans from chemicals of widespread importance). Comments on this issue also will be accepted. Additionally, suggestions of other activities to improve the NTP will be welcomed.

Comments at the meeting should be as brief as possible and may be supplemented by written comments, if desired, which should be received by the Program by C.O.B. September 4, 1992. Although registration is not required, it would be helpful for organizing the time available to hear in advance from persons who plan to make comments or statements. An order of speakers can then be assigned. Please contact the Executive Secretary, NTP Board of Scientific Counselors, Dr. Larry G. Hart, by telephone at 919/541–3971. Written comments may be sent to Dr. Hart at NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, or by FAX to 919/541–2260.

Dated: August 11, 1992.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 92–19463 Filed 8–14–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–00–4212–13; U–66674]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of lands in Summit and Wasatch Counties, Utah.

SUMMARY: The following described public land is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716):

Description	Acres
T. 2S., R. 4E, SLM	
Sec. 9, SE¼	
Sec. 10, SW¼	
Sec. 14, N½	
Approximate acres	110.00

Final determination on the exchange will await completion of an environmental analysis. In accordance with the regulations in 43 CFR 2201.1(b), the publication of this notice will segregate the public lands as described above, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws.

Information on the exchange is available from the District Manager, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 92–19493 Filed 8–14–92; 8:45 am]

BILLING CODE 4310–DQ–M

INTERSTATE COMMERCE COMMISSION

[Final Docket No. 32129]

Burlington Northern Railroad Company—Trackage Rights Exemption—Norfolk and Western Railway Company

Norfolk and Western Railway Company (NW) has agreed to grant approximately 4.4 miles of overhead trackage rights to Burlington Northern Railroad Company (BN) between Bridge, MO and Oakwood Control Point, MO, as follows: Between NW/BN Junction at Bridge, MO (NW Milepost DH–515.3 corresponding to BN Milepost 120.3), via Hannibal, MO (NW Milepost 515.5 corresponding to NW Milepost H–0.0) and via Outer Depot, MO, to Oakwood Control Point, MO (NW Milepost H–4.2). The trackage rights will be effective on August 24, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Ethel A. Allen, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354

I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 11, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19529 Filed 8-14-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 406x)

CSX Transportation, Inc.—Abandonment Exemption—in Weakley County, TN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of a portion of its Mobile Division, Memphis Subdivision, between Milepost ND-129.6 and Milepost ND-132.05 at Dresden, a distance of approximately 2.45 miles in Weakley County, TN, subject to employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 16, 1992. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by August 27, 1992. Petitions to stay must be filed by September 1, 1992. Petitions to reopen must be filed by September 11, 1992. Requests for public use conditions must be filed by September 7, 1992.

ADDRESSES: Send pleadings, referring to Docket No. AB-55 (Sub-No. 406X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610; (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721).

Decided: August 10, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19530 Filed 8-14-92; 8:45 am]

BILLING CODE 7035-01-M

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-46]

NASA Advisory Council (NAC), Task Force for Shuttle Mission Review; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Task Force for Shuttle Mission Review.

DATES: August 31, 1992, from noon to 4 p.m.

ADDRESSES: 600 Maryland Avenue, SW., 300 East Capital Gallery, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. William Vantine, Code MB, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2510.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room (which is approximately 30 persons including Task Force members and other participants). The NAC Task Force for Shuttle Mission Review is reviewing the agency's process for assuming the responsibility for accomplishing satellite rescue and repair missions. The Task Force is chaired by Dr. Eugene Covert, Head of the Department of Aeronautics and Astronautics, Massachusetts Institute of Technology and is composed of 15 members. The purpose of this meeting is to discuss the potential population of satellites that could be eligible for rescue and repair through the year 2000. Public comments on other aspects of satellite rescue and repaid will also be solicited at this meeting. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: August 13, 1992.

Danalee Green,

Director, Management Controls Office.

[FR Doc. 92-19606 Filed 8-13-92; 11:40 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Grant Application Availability Notice for Fiscal Year 1993

AGENCY: Institute of Museum Services, NFAH.

ACTION: Grant application availability notice for fiscal year 1993.

SUMMARY: This grant application announcement applies to the General Operating Support (GOS), Conservation Project Support (CP), Conservation Assessment Program (CAP), Museum Assessment Program (MAP I), Museum Assessment Program (MAP II), Museum Assessment Program III (MAP III) and Professional Services Program (PSP) awards under 46 CFR part 1180 for Fiscal Year 1993.

ADDRESSES: Institute of Museum Services, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, IMS Public Information Officer, (202) 786-0536; after September 25, 1992 call (202) 606-8536. Deaf and hearing impaired individuals may call the TDD Line, (202) 786-9136, after September 25, 1992 call (202) 606-8636.

SUPPLEMENTARY INFORMATION: The purpose of these awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions.

Eligibility

Museums meeting the definitions in 45 CFR 1180.3 may apply for these programs. The definition of "museum" includes (but is not limited to) the following institutions if they satisfy the other provisions of this section: aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art; history (including historic buildings); natural history; science and technology; and planetariums.

To be eligible for support from IMS a museum must:

Be organized as a public or private nonprofit institution and exist on a permanent basis for essentially educational or aesthetic purposes; and

Exhibit tangible objects through facilities it owns or operates; and

Have at least one professional staff member or the full-time equivalent whose primary responsibility is the care, or exhibition to the public of objects owned or used by the museum; and

Be open and have provided museum services to the general public on a regular basis for at least two full years * prior to the date of application to IMS; and

Be located in one of the fifty States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Program Categories

General Operating Support (GOS) IMS makes awards under the GOS program to museums to maintain, increase, or improve museum services through support for basic general operating expenses.

Conservation Project Support Program (CP) Awards are made through the CP program to assist with the conservation of museum collections, both living and non-living.

Conservation Assessment Program (CAP) Awards are made through CAP to provide an overall assessment of the condition of a museum's environment and collections to identify conservation needs and priorities. CAP is a non-competitive, one-time funding opportunity, offered on a first-come, first-served basis. It is administered in cooperation with the National Institute for Conservation, See 45 CFR part 1180, subpart D.

Museum Assessment Program (MAP) The MAP I funds an overall assessment of a museum's operations. The MAP II funds an assessment of the museum's collection-related policies. The MAP III provides an assessment of the public dimension of museum operations. All of the Museum Assessment Programs are non-competitive, one-time funding opportunities, offered on a first-come, first-served basis. The Museum Assessment Programs are administered in cooperation with the American Association of Museums through a memorandum of understanding. See 45 CFR part 1180, subpart D.

Professional Services Program (PSP) This program provides matching funds to professional museum associations for projects that serve the museum community.

Section 206 of the Museum Services Act, Title II of Pub. L. 94–462, as amended, contains authority for these programs. (20 U.S.C. 965)

Deadline Date for Transmittal of Applications

Applications must be mailed or hand-delivered by the deadline date:

Program	Deadline
GOS	January 22, 1993.
CP	October 16, 1992 and April 2, 1993.
PSP	March 19, 1993.
CAP	December 4, 1992.
MAP I	October 30, 1992 and April 30, 1993.
MAP II	January 29, 1993.
MAP III	February 26, 1993.

For GOS, CP and PSP Applications that are sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue NW., room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-canceled by the U.S. Postal Service.

Applications that are hand-delivered must be taken to the Institute of Museum Services, 1100 Pennsylvania Avenue NW., room 609, Washington, DC 20506. Hand-delivered applications will be accepted between 9 a.m. and 4:30 p.m. (Washington DC time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

For MAP I, MAP II, and MAP III Applicants must apply to IMS through the American Association of Museums (AAM). IMS supplies the AAM with application forms and instructions. These are forwarded by AAM to applicant museums. The Director of IMS approves applications meeting the MAP I, MAP II, and MAP III requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards, subject to the availability of funds. If a museum's MAP I, MAP II or MAP III application is received on or before the indicated dates, it will be processed together with other MAP I, MAP II, or MAP III applications received during that period. Applications received after the indicated dates will be processed during the subsequent MAP I, MAP II or MAP III periods. In no event will MAP applications received after April 30, 1993, MAP II applications received after January 29, 1993, or MAP III application received after February 26, 1993 be processed for Fiscal Year 1993 awards. Applicants should contact the American Association of Museums, 1225 Eye Street, NW., Washington, DC 20005, for application packets.

For CAP Applicants must apply to IMS through the National Institute for Conservation (NIC). IMS supplies the NIC with application forms and instructions. These are forwarded by NIC to applicant museums. The Director of IMS approves applications meeting the CAP requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards subject to the availability of funds. Applicants must be received by December 4, 1992. Applications for FY 1993 awards which cannot be funded will not be carried over to the next fiscal year. All unfunded applicants who wish to receive an award in the subsequent year, must reapply. Interested parties should contact the National Institute for Conservation, 3299 K Street NW., suite 403, Washington, DC 20007 for applications.

Program Information

GOS program regulations are contained in 45 CFR XI 1180.7 (1988) and related provisions.

CP program regulations are contained in 45 CFR 1180.20 (1988) and related provisions.

CAP and MAP program regulations are contained in 45 CFR part 1180, subpart D (1988).

PSP program regulations are contained in 45 CFR part 1180, subpart E (1988).

Further program information may be found in the Application forms and accompanying instructions in the Application. See paragraph on Application Forms.

* Applicants to the Museum Assessment Program and the Conservation Assessment Program need not be open for two years.

Available Funds

As of publication time, funds for fiscal year 1993 have not been appropriated. Figures given in this section pertain to available funds for the 1992 fiscal year.

GOS For FY 1992, $20,868,000 was available for this program. The GOS program award is equal to 15% of the museum's operating budget to a maximum of $112,500 to be spent over a two-year period. The grant amount is determined annually by the National Museum Services Board. A museum that receives an award in one fiscal year may not apply for the following year's competition. (See 45 CFR 1190.16(b)).

CP For FY 1992, $2,940,000 was available for this program. Normally, IMS makes matching conservation grants of no more than $25,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstances warrant, the Director, with the advice of the Board, may award a Conservation Project Support grant which obligates in excess of $25,000 in Federal funds to a maximum of $75,000. The Director may make such a determination with respect to a category of Conservation grants by notice published in the **Federal Register**. IMS awards Conservation Project Support grants only on a matching bases. At least 50% of the costs of a project must be met with non-federal funds. See 45 CFR 1180.20(f)).

CAP For FY 1992, $905,000 was available for this program.

MAP I, MAP II, MAP III For FY 1992, $570,000 was available for this program.

PSP For 1992, $246,000 was available for this program. This program provides matching funds for cooperative agreements that generally do not exceed $50,000.

Funding Priorities for Conservation Project Support Program

The National Museum Services Board, by notice published in the **Federal Register**, may establish funding priorities among the types of projects. IMS Conservation Project Support guidelines identify four broad categories of museum collections: non-living; systematics/natural history collections; living collections/animals; and living collections/plants.

For each of the categories, with the exception of living collections/animals, the funding priority is a general conservation survey of collections and environmental conditions including development of institutional long-range conservation plans. For living collections/animals the funding priority is research for improved conservation techniques.

Application Forms

IMS mails application forms and program information in General Operating Support, Conservation Project Support and Professional Services Program application packets to museums and other institutions on its mailing list. Applicants may obtain application packets by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue NW., room 609, Washington, DC 20506, (202) 786–0539. After September 25, 1992 call (202) 606–8536. Deaf and hearing impaired individuals may call the TDD Line, (202) 786–9136, after September 25, 1992 call (202) 606–8636.

To receive an application for the Conservation Assessment Program contact the National Institute for Conservation, 3299 K Street, NW., suite 403, Washington, DC 20007 (202) 625–1495.

To receive an application for the Museum Assessment Programs contact the American Association of Museums,1225 Eye Street, NW., Washington, DC 20005 (202) 289–1818.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Dated: August 11, 1992.

Susannah Simpson Kent,

Director, Institute of Museum Services.

[FR Doc. 92–19483 Filed 8–14–92; 8:45 am]

BILLING CODE 7036–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31016; International Series Release No. 433; File No. SR–Amex–92–03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the Japan Index

August 11, 1992.

On January 21, 1992 the American Stock Exchange ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change to list warrants based on the Japan Index ("Japan Index" or "Index"), a broad-based index of 210 Japanese stocks traded on the Tokyo Stock Exchange ("TKE").

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

Notice of the proposal appeared in the **Federal Register** on February 10, 1992.[3] The Commission received one comment letter regarding the proposal.[4] This order approves the Amex's proposal.

I. Description of the Proposal

The Exchange proposes to list index warrants [5] based on the Japan Index, a price-weighted index developed by the Amex consisting of 210 actively-traded stocks traded on the TKE. Previously, the Commission reviewed the Amex's Japan Index when the Commission approved a proposal by the Amex to trade options based on the Japan Index.[6]

The design and construction of the Japan Index has not changed since the Commission approved the trading of options on the Index. Specifically, the TKE-traded securities selected by the Amex for the Japan Index must meet eligibility standards with respect to market value, trading activity, and price level. Additionally, the Exchange implements share price eligibility standards to ensure that no single issue will have a disproportionate impact on the Japan Index. Moreover, in order to ensure that no industry group within the Japanese market dominates the Index, when selecting component Japanese securities for inclusion in the Index, the Amex gives consideration to the selection of securities that are representative of the various industry group components of the Japanese stock market.

The Japan Index is a price-weighted index.[7] The Amex, for the purposes of

[3] The proposed rule change was published for comment in Securities Exchange Act Release No. 30336 (February 4, 1992), 57 FR 4898. The Amex amended its proposal on June 2, 1992 to provide that only American-style Japan Index warrants would be listed. See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated June 2, 1992.

[4] See letter from Minora Nagaoka, President & CEO, TKE, to Jonathan G. Katz, Secretary, SEC, dated February 28, 1992 ("TKE Letter"), discussed *infra* note 23.

[5] Warrants on stock indexes are securities that incorporate certain characteristics of both equity and options. Like debt, they are issued by a corporation that serves as guarantor of the warrant obligation. Like a stock index option, however, an index warrant is based on the performance of an underlying index and has a fixed expiration date. Index warrants also are cash-settled.

[6] For additional information regarding the Japan Index, See Securities Exchange Act Release No. 28475 (September 27, 1990), 55 FR 40492 ("Japan Index Option Approval Order").

[7] In a price-weighted index, an issue's weight in the index is based on its price per share rather than its total market capitalization (*i.e.*, price per share times the number of shares outstanding). In order to prevent certain high-priced securities in the Index

Continued

calculating the Japan Index, uses last sale price information of the component securities from the TKE. The Japan Index is denominated in U.S. dollars and calculated once a day and disseminated before the opening of trading in the United States. In calculating the Japan Index, 100 yen is assigned to equal one U.S. dollar. Thus, if the aggregate price of the Index's component stocks is 30,500 yen, the Japan Index value will be 305. This assures that the Japan Index value will correspond directly to changes in the aggregate yen prices of the component stocks and will not affected by fluctuating yen/dollar exchange rates.

The Amex is submitting its proposal to list Japan Index warrants pursuant to the requirements of a 1988 Commission order ("Index Warrant Approval Order") that, among other things, permitted the Exchange to list warrants on established market indexes, both foreign and domestic.[8] Consistent with the Index Warrant Approval Order, the Amex represents that the Japan Index warrant issues will conform to the listing guidelines in section 106 of the Amex Company Guide. Specifically, section 106 provides that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earning requirements in section 101(a) of the Amex Company Guide; [9] (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

The Amex proposes that the warrants will be direct obligations of their issuer subject to cash-settlement during their term, and exercisable throughout their life (*i.e.*, American style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Japan Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Japan Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Because index warrants are derivative in nature and closely resemble index options, the Amex has proposed safeguards that are designed to meet the investor protection concerns raised by the trading of index warrants. First, the Exchange proposes to apply its options suitability standard to Japan Index warrant recommendations and the requirement that discretionary orders in Japan Index warrants be approved on the day entered by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"). In addition, the Exchange has recommended that Japan Index warrants only be sold to options approved accounts. Moreover, the Exchange represents that, prior to the commencement of trading of Japan Index warrants, circulars will be distributed to its members calling attention to the specific risks associated with warrants on the Japan Index and any additional sales practice requirements that will be imposed.

II. Comments Received

The Commission received one comment letter from the TKE opposing the Amex proposal. In general, the TKE questioned the benefits of derivative products and indicated its belief that derivative products based on Japan stocks have been a factor "in bringing about the current, vulnerable [TKE] market situation." To this end, the TKE points out that it has resorted to "every possible measure to prevent an excessive expansion of derivative markets and to alleviate their impacts on the underlying market." [10] In sum, the TKE believes that "a healthy and sound stock market is of critical importance not only for all sorts of participants therein but also for those of derivative markets based thereon."

Accordingly, the TKE is concerned that the Amex proposal would lead to a proliferation of derivative products based on the Japanese market and with the "collective impact" of additional derivative products on the underlying TKE market. As a result, the TKE requested that the SEC give due consideration to the possible impact of the Amex's proposal on the TKE because the TKE is the exchange where the stocks underlying the Japan Index are traded. In that regard, the TKE asserted that to date the SEC has not approved warrants based on U.S. stocks because of concern regarding the impact of such warrants on the underlying U.S. market.[11]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[12] Specifically, the Commission believes that Japan Index warrants can provide investors a means by which to hedge against exposure to the Japanese equity market and act as surrogate instruments for trading the Japanese securities market.[13] In addition, the Commission notes that by permitting U.S. persons access to Japan Index warrants competition among the markets for Japanese-based derivatives will be enhanced.

A. Index Design

The Commission also believes that the Japan Index warrants are consistent with the guidelines previously articulated in the Index Warrant Approval Order. Because the Japan Index is a broad-based index comprised of actively-traded, highly-capitalized stocks,[14] the trading of cash-settled warrants on the Japan Index on the Amex does not raise unique regulatory concerns. The commission believes, as it did when the Amex's Japan Index option proposal was approved, that the broad diversification, large capitalization, and liquid markets for the Japan Index's component stocks significantly minimize

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from having an inordinately higher weight in comparison to other stocks in the Index, the Amex "down scales" the price of these securities. In particular, for those component securities with a par value greater than 50 yen, the Amex calculates the price of that stock, for Index purposes, to be equal to the last sale price of the stock divided by the ratio of the par value of the stock to a par value of 50. Currently, there are four securities in the Index that are subject to this provision.

[8] See Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832.

[9] Section 101(a) of the Amex Company Guide requires the issuer to have stockholders' equity of at least $4,000,000 and pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

[10] See TKE letter, *supra* note 4 at 2. Among other things, the TKE notes that margin requirements for stock index futures and options traded in Japan have been increased from 9% to 30%.

[11] See note 23, *infra* and accompanying text which addresses these assertions.

[12] 15 U.S.C. 78f(b)(5) (1982).

[13] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest and consistent with the protection of investors. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[14] See Japan Index Option Approval Order, *supra* note 6.

the potential for manipulation of the Index.[15]

B. Sales Practice Requirements

The Commission notes that the Amex's rules and procedures that address the special concerns attendant to the secondary trading of index warrants will be applicable to Japan Index warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the Exchange has addressed adequately the potential public customer problems that could arise from the derivative nature of Japan Index warrants. Moreover, as described above, the Exchange plans to distribute a circular to its membership calling attention to the specific risks associated with Japan Index warrants and, pursuant to the Exchange's listing guidelines, only companies capable of meeting their warrant obligations will be eligible to issue Japan Index warrants.[16]

C. Surveillance Sharing

The Commission as a general matter believes that surveillance sharing agreements between the relevant foreign and domestic exchanges are important where a foreign stock index product is to be traded in the United States. Such agreements are an important measure for surveillance of the derivative and underlying securities markets. Most importantly, they ensure the availability of information which is necessary to detect and deter potential manipulations and other trading abuses. In most cases, in the absence of such a surveillance sharing agreement, the Commission believes that it would not be possible to conclude that a derivative product, such as a Japan Index warrant, was not readily susceptible to manipulation.

Although the Amex and the TKE do not have a written surveillance sharing agreement that covers the trading of Japan Index warrants,[17] a number of other factors mitigate against such a conclusion and support approval of the proposal in this case.[18] First, while the size of an underlying market is not necessarily determinative of whether a particular derivative product based on that market is readily susceptible to manipulation, the sheer size of the market for the securities underlying the Japan Index make it less likely that the proposed Japan Index warrants are readily susceptible to manipulation.[19] Second, the Commission notes that the TKE is under the regulatory oversight of the Japanese ministry of Finance ("MOF"). The MOF has responsibility for both the Japanese securities and derivative markets. Accordingly, the commission believes that the ongoing oversight of the trading activity on the TKE by the MOF will help to ensure that the trading of Japan Index warrants will be carefully monitored with a view to preventing unnecessary market disruptions.

Third, the Commission notes that it has a longstanding working relationship with the MOF on a number of matters. This relationship, which has developed over a number of years through the SEC's and the MOF's active involvement in the International Organization of Securities Commissions, bilateral meetings between the SEC and the MOF, and trilateral meetings between the SEC, MOF, and the Department of Trade and Industry and the Securities and Investments Board of the United Kingdom, provides a framework for ongoing discussions in the event any particular market activity raised concerns regarding potential market manipulation or other improper or illegal trading involving Japan Index warrants. Moreover, at least since the introduction of stock index futures based on Japanese equities, both the TKE and MOF repeatedly have acted to address any market disruption concerns that have arisen.

Fourth, the SEC and the MOF have concluded a Memorandum of Understanding ("MOU") that provides a framework for mutual assistance in investigatory and regulatory matters.[20] Based on the longstanding relationship between the SEC and the MOF and the existence of the MOU, the Commission is confident that it and the MOF could acquire information from one another similar to that available pursuant to a surveillance sharing agreement between the Amex and the TKE about transactions in TKE-traded stocks related to Japan Index warrant transactions on the Amex and vice versa.[21]

Nevertheless, the Commission continues to believe strongly that a surveillance sharing agreement between the TKE and the Amex covering Japan Index warrants would be an important measure to deter and detect potential manipulations or other improper or illegal trading involving Japan Index warrants. Accordingly, the Commission believes it is critical that the TKE and the Amex continue to work together to consummate a formal surveillance sharing agreement to cover Japan Index warrants as soon as practicable.[22]

Additionally, the Commission finds that, in light of the composition of the Japan Index, the customer protection provisions applicable to trading in the warrants, and the Exchange guidelines for the listing of the warrants, trading in Japan Index warrants will not have an adverse impact on U.S. financial markets. In fact, the Commission believes that Japan Index warrants will benefit U.S. markets by providing investors with an opportunity to hedge against stock market fluctuations in Japan.

The Commission is mindful of the TKE's concern about the potential impact of Amex-listed Japan Index warrants on the TKE.[23] The

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[15] See Japan Index Option Approval Order, *supra* note 6.

[16] In its orders approving other stock index warrants, the Commission also expressed concern about the potential credit risk and systemic risk inherent in issuing and trading stock index warrants. See e.g., Securities Exchange Act Release No. 30463 (March 11, 1992), 57 FR 9284 (order approving the listing of FT–SE Eurotrack 200 Index options and warrants. Accordingly, the Commission believes the Amex should monitor these risks in the context of trading warrants on the Japan Index.

[17] The Amex and the TKE, however, currently have a surveillance sharing agreement in place that covers other derivative products traded on the Amex. That agreement in the past has been amended by the Amex and the TKE to include new products, such as the trading of Japan Index options. Accordingly, the Commission believes that the Amex and TKE similarly should amend their existing agreement to include Japan index warrants. See Agreement between the Amex and the TKE to Share market Surveillance Information ("Amex/TKE Agreement"), dated November 4, 1988 and Amendment No. 2 to the Amex/TKE Agreement, dated September 27, 1990.

[18] For some time, the Amex has sought to establish a surveillance agreement with the TKE to cover these warrants, but the TKE is opposed to the proliferation of derivative products.

[19] In evaluating the manipulative potential of a proposed index derivative product, as it relates to the securities that comprise the index and the index product itself, the Commission has considered several factors, including: (1) The number of securities comprising the index or group; (2) the capitalization of those securities; (3) the depth and liquidity of the secondary markets for those securities; (4) the diversification of the group or index; (5) the manner in which the index or group is weighted; and (6) the ability to conduct surveillance of the product. See, *e.g.*, letter from Jonathan G. Katz, Secretary, SEC, to Dr. Paula Tosini, Director, Division of Economic Analysis ("DEA"), Commodity Futures Trading Commission ("CFTC"), dated April 18, 1988 and letter from Jonathan G. Katz, Secretary, SEC, to Paula Tosini, Director, DEA, CFTC, dated September 1, 1988.

[20] Memorandum of the United States Securities and Exchange Commission and the Securities Bureau of the Japanese Ministry of Finance on the Sharing of Information, dated May 23, 1986.

[21] The information could include transaction, clearing, and customer information necessary to conduct an investigation.

[22] See *supra* note 17.

[23] Although, as the TKE noted, domestic index warrants are not traded in the U.S., the Commission currently is considering proposals by U.S. exchanges to list index warrants based on indexes comprised of U.S. stocks. Moreover, the Commission's regulatory scheme has not precluded

Continued

Commission believes that the TKE overstates the potential impact of the Amex's proposal on the market for component stocks in Japan. First, the Commission notes that the Japan Index is broad-based and diversified and includes more than 200 highly capitalized securities that generally are actively traded on the TKE. Second, numerous derivative products based on TKE-listed stocks trade on several exchanges, including the TKE, the Osaka Stock Exchange, the Singapore International Monetary Exchange, the Chicago Mercantile Exchange, and the Chicago Board of Trade. Moreover, numerous warrant and off-exchange options are traded world-wide on Japanese stock market indexes, and Nikkei warrants and Japan Index options are traded on the Amex.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) and the rules and regulations thereunder.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (SR–Amex–92–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19507 Filed 8–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18885; 811–5373]

AIM Government Funds, Inc.; Application

August 7, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: AIM Government Funds, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 31, 1992 and amended on June 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 1, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Eleven Greenway Plaza, suite 1919, Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272–7779, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is an open-end diversified management investment company. On October 26, 1987, applicant filed a notification of registration pursuant to section 8(a) under the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement was declared effective on January 15, 1988, and applicant commenced public offering of its shares on January 25, 1988.

2. On June 15, 1990, applicant's Board of Directors approved an Agreement and Plan of Reorganization (the "Plan") by and between applicant, with respect to its sole series portfolio, AIM U.S. Government Securities Fund (the "Portfolio"), and Short Term Investments Co. (the "Trust"), a Massachusetts business trust, with respect to AIM Limited Maturity Treasury Portfolio (the "Fund"), a class of the Limited Maturity Treasury Portfolio, which is a series portfolio of the Trust.

3. Proxy materials relating to a special meeting of shareholders and describing the Plan were mailed to shareholders on August 15, 1990.

4. On September 14, 1990, applicant's shareholders approved the Plan at the special meeting of shareholders.

5. As of October 2, 1990, there were 150,867.897 shares outstanding of applicant, with an aggregate net asset value of $1,386,988.56 and a per share net asset value of $9.19.

6. Pursuant to the Plan, all of the Portfolio's assets were transferred to the Trust on behalf of the Fund on October 3, 1990. In exchange, applicant received 141,529.445 shares of the Fund with an aggregate net asset value of $1,386,988.56 and a per share net asset value of $9.80. Applicant then distributed to its shareholders 0.9381 shares of the Fund for each share of applicant, in complete liquidation of the Portfolio and applicant.

7. In connection with the reorganization under the Plan, applicant incurred expenses, including legal fees, accounting fees, transfer agent fees, and printing and mailing costs for proxy solicitation, all of which have been assumed and paid by AIM Advisors, Inc., applicant's investment adviser.

8. Applicant has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19471 Filed 8–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18886; 811–5185]

AIM Tax-Exempt Funds, Inc.; Application

August 7, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: AIM Tax-Exempt Funds, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

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the development in the U.S. of very active derivative products based on U.S. stock market indexes. For example, the Chicago Board Options Exchange's OEX option contract based on the Standard and Poor's 100 Index is the most active option contract in the world, and trading volume in these options dwarfs that of Nikkei warrants on the Amex.

[24] 15 U.S.C. 78s(b)(2) (1982).

[25] 17 CFR 200.30–3(a)(12) (1989).

FILING DATE: The application was filed on January 31, 1992 and amended on June 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 1, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Eleven Greenway Plaza, suite 1919, Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272–7779, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is an open-end non-diversified management investment company. On June 1, 1987, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement was declared effective on June 12, 1987, and applicant commenced public offering of its shares on June 15, 1987.

2. On January 31, 1990, applicant's Board of Directors approved an Agreement and Plan of Reorganization (the "Plan") by and between applicant, with respect to its sole series, AIM California Tax-Free Intermediate Fund (the "Portfolio"), and Associated Planners Investment Trust, a Massachusetts business trust, with respect to its Associated Planners California Tax-Free Fund series (the "Fund").

3. Proxy materials relating to a special meeting of shareholders and describing the Plan were mailed to shareholders on March 15 and 16, 1990.

4. On April 23, 1990, applicant's shareholders approved the Plan at the special meeting of shareholders.

5. As of April 30, 1990, there were 502,107.388 shares outstanding of the Portfolio, with an aggregate net asset value of $4,946,300.56 and a per share net asset value of $9.85.

6. Pursuant to the Plan, all of the Portfolio's assets were acquired by the Fund on May 1, 1990. In exchange, applicant received 527,886.933 shares of the Fund with an aggregate net asset value of $4,946,300.56 and a per share net asset value of $9.37. Applicant then distributed to its shareholders 1.14096 shares of the Fund for each share of applicant, in complete liquidation of the Portfolio and applicant.

7. In connection with the reorganization under the Plan, applicant incurred expenses, including legal fees, accounting fees, transfer agent fees, and printing and mailing costs for proxy solicitation, all of which have been assumed and paid by AIM Advisors, Inc., applicant's investment adviser.

8. Applicant has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19470 Filed 8–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18883; No. 811–4613]

Fortis Benefits Insurance Co. et al.; Applications

August 7, 1992

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Fortis Benefits Insurance Company ("Fortis Benefits"), Variable Account C of Fortis Benefits Insurance Company ("Account C"), and Fortis Investors, Inc. ("Investors") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS. Order requested under section 6(c) of the 1940 Act for exemptions from the provisions of Sections 2(a)(32), 22(c), 26(a)(2)(C), 27(a)(3), 27(c)(1), 27(c)(2) and 27(d) and Rules 22c-1, 6e-3(T)(b)(12), 6e-3(T)(b)(13) and 6e-3(T)(d)(1)(ii) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit them to issue flexible premium variable life insurance policies that enable Fortis Benefits to: (1) Credit the policyholder's account with "policy value advances" and later recover the policy value advances from the assets of Account C; (2) deduct any premium tax charge not previously deducted as part of a contingent deferred charge ("CDSC"); and (3) deduct sales charges, in a manner that may result in deductions in one period being considered to be higher than deductions taken out in a subsequent period.

FILING DATE: The application was filed on June 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 28, 1992, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, David A. Peterson, Esq., Fortis Benefits Insurance Company, 500 Bielenberg Drive, Woodbury, Minnesota 55125, and Thomas C. Lauerman, Esq., Freedman, Levy, Kroll & Simon, 1050 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney (202) 272–2676, or Wendell Faria, Deputy Chief (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Fortis Benefits, a Minnesota corporation, is an indirect wholly-owned subsidiary of Fortis, Inc., which is itself indirectly owned 50% by N.V. AMEV and 50% by Compaignie Financiere et de Reassurance de Group AG. Fortis, Inc. manages the United States operations for these two foreign companies.

2. Fortis Benefits established Account C under the laws of Minnesota as a segregated investment account for the purpose of funding variable life insurance policies, including Fortis Benefits' VUL–500 Plus Flexible Premium Variable Life Insurance Policy ("Policy") described herein. Account C, a registered unit investment trust under the 1940 Act, currently consists of six subaccounts: Growth Stock Subaccount, U.S. Government Securities Subaccount, the Money Market Subaccount, the Diversified Income Subaccount, the Asset Allocation Subaccount and the Global Growth Subaccount (collectively the "Subaccounts"). Each Subaccount invests exclusively in shares of a corresponding portfolio of Fortis Series Fund, Inc., a registered management investment company.

3. Investors (formerly AMEV Investors, Inc.), an affiliated company of Fortis Benefits, is the principal underwriter for the policies. Investors is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

4. The Policy permits a policy owner to select, and change from time-to-time, between two death benefit options. Under one option, the "policy value" is added to the policy face amount of insurance coverage for purposes of computing the death benefit. The Policy owner also may change the face amount from time-to-time, subject to certain restrictions.

5. The Policy owner may allocate the Policy value to one or more of the Subaccounts and/or to Fortis Benefits' General Account ("General Account") and may change the allocations or transfer amounts previously allocated from time-to-time, subject to certain limitations.

6. The Policy may be fully surrendered at any time for its surrender value and, generally after the first Policy year, the Policy owner may make a partial withdrawal of the surrender value once a year. The Policy owner also may take out loans and may vary the frequency and amount of premium payments.

7. The Policy will not lapse for the lesser of twelve years from the Policy date or until age 65 (five years if over age 60 at issue) if certain minimum premium payments are made. For purposes of this "guaranteed death benefit," the premium payment requirement is based on monthly minimum premiums, which are also used, among other things, to make certain sales charge and Policy value advance computations. While different monthly minimum premiums may be used for different purposes, in no case will the sum of twelve monthly minimum premiums with respect to a Policy or benefit change exceed the guideline annual premium with respect to such Policy or change, respectively, as defined in Rule 6e-3(T)(c)(8).

8. The "Policy value" is the amount available to earn a return for the Policy owner. Unless prohibited by applicable state insurance law, a Policy may be eligible for a credit in the form of a Policy value advance ("Advance") on the last day of the ninth year (twelfth year in Oregon) and each subsequent Policy year. Except in Oregon, where there are no premium payment requirements for an Advance, eligible Policies may receive an Advance only if, as of the date of the credit, (1) the cumulative amount of premiums paid over the life of the Policy, less any outstanding Policy loans, and less the cumulative amount of partial withdrawals taken by the Policy owner, at least equals (2) the cumulative monthly minimum premiums to date. No further Advances will be paid if the premium requirement is not met for any credit.

9. Advances paid at the end of the ninth (twelfth year in Oregon) and each subsequent policy year will equal ten percent (five percent in Oregon), of the average of the total minimum premiums for each year to date. Advances at the foregoing rate are not guaranteed, and Fortis Benefits reserves the right to reduce them, subject to guaranteed minimum rates. The guaranteed rates are based on the insured's age at Policy issue, as follows: ages 0–40, 10%; ages 41–43, 9%; ages 44–46, 8.25%; ages 47–50, 7.5%; ages 51–55, 6%; ages 56–60, 5.5%; and ages 61–70 (and all ages in Oregon), 5%. These guarantees apply through the 19th (21st in Oregon) Policy year, but do not apply thereafter.

10. Advances will be allocated among the General Account and the Subaccounts on a pro rata basis in proportion to the amount of Policy Value in each, exclusive of amounts transferred to the General Account as a result of Policy loans. Following such allocation, these amounts will be credited with investment performance and otherwise be treated the same as any other amounts of Policy value.

11. Fortis Benefits will notify Policy owners that they may be forfeiting Advances by failing to make sufficient premium payments. An annual statement will inform each Policy owner of the dollar amount that must be paid for the year, plus any unpaid amounts from prior years, to be eligible for Advances, or if no such premiums must be paid.

12. Advances are subject to recovery by Fortis Benefits through the following deductions made after the payment of the Advance: $4.00 per month plus a daily deduction at an annual rate of .27% of the value of the Policy's net assets in Account C. These deductions continue until their cumulative amount equals the cumulative amount of Advances paid, irrespective of any return that may be earned thereon in Account C or in the General Account. No CDSC is imposed to recover Advances.

13. Unless prohibited by applicable state insurance law, a Policy may be eligible for an increase in Policy value in the form of a "cash value bonus" ("Bonus" or "Bonuses") on the last day of the ninth and each subsequent Policy year. The amount of any Bonus is a percentage of the surrender value at the date of the Bonus, as follows:

BONUS AS A PERCENT OF SURRENDER VALUE AT THE END OF POLICY YEAR

Surrender Value On Date of Bonus	9 to 19 (percent)	20 and later (percent)
Less than $50,000	.00	.00
$50,000 to $299,999	.10	.10
$300,000 to $499,999	.55	.55
$500,000 or more	.55	.80

Bonuses at the foregoing rates are not guaranteed, and Fortis Benefits retains the right in its sole discretion to reduce or discontinue them.

Bonuses will be allocated among the General Account and the Subaccounts on a *pro rata* basis. These amounts will be fully vested and will be credited with investment performance and otherwise will be treated the same as any other amounts allocated to the Subaccounts or the General Account, respectively.

14. A premium tax charge in the amount of 2.3% and a sales charge in the amount of 7.5% of all premium payments are assessed through monthly and daily deductions from Policy value. These charges are not deducted from premium payments.

15. The monthly deduction for premium tax and sales charges totals $4.00 per month, and the daily deduction is an aggregate annual rate of .27% of the value of the Policy's net assets in Account C. These deductions will be waived to the extent that the cumulative amount of all such deductions would exceed 9.8% of all premium payments made to date. Premium tax and sales charge deductions will not be made at any time when similar deductions for Advances are being made. Any portion of these charges that are not recovered through monthly and daily deductions

may be deducted as part of the surrender charge ("Surrender Charge").

16. As part of the Surrender Charge, Fortis Benefits imposes an additional CDSC in the amount of 22% of premiums paid in the first two Policy years that are not in excess of the sum of twelve monthly minimum premium payments.

17. An additional CDSC also will be payable as part of the Surrender Charge on certain total surrenders or Policy lapses following an increase in face amount requested by a Policy owner. The maximum additional CDSC will be 22% of the lesser of (1) the sum of twelve monthly minimum premiums for the face amount increase or (2) the amount of actual premium payments deemed attributable to the increase which are made not later than two years after the date of the increase.

18. A charge of $5.00 per thousand dollars of a Policy's initial face amount and per thousand dollars of any increase in face amount will be imposed for other policy issuance expenses as part of the Surrender Charge. This charge will not exceed the amount permitted by Rule 6e–3(T)(b)(13)(iii)(A).

19. The Surrender Charge may be assessed upon the lapse or full surrender of a Policy before the eleventh Policy anniversary or the eleventh anniversary of a face amount increase. No Surrender Charge is deducted upon a partial withdrawal of policy value or a face amount decrease. The maximum Surrender Charge is the sum of: (1) Any portion of the current 2.3% premium tax charge and the 7.5% sales charge that has not yet been collected through the monthly and daily deductions; (2) the additional CDSCs; and (3) the charge for other Policy (or increase) issuance expenses. The sales charge component of clause (1) above and all of clause (2) constitute CDSCs.

20. The entire Surrender Charge is subject to an overall upper limit or "cap," based on the insured's age and the face amount or face amount increase, as follows:

Insured person's age at time of policy issuance or face amount increase	Overall "Cap" on surrender charge (per thousand dollars of face amount or of face amount increase)
0 to 30 Years	$9.00
31 to 40	10.00
41 to 45	12.00
46 to 50	14.00
51 to 55	16.00
56 to 60	21.00
61 to 65	28.00
66 to 70	40.00

The cap decreases on the fifth and each subsequent Policy anniversary or face amount increase anniversary until it reaches zero on the eleventh Policy anniversary or increase anniversary. There will be no Surrender Charge on surrenders or lapses as of the later of the eleventh Policy anniversary or the eleventh anniversary of any face amount increase.

21. The monthly deduction from Policy value includes: (1) Premium tax and sales charges or recovery of Advances; (2) the cost of insurance charge; (3) while the Guaranteed Death Benefit is in effect, a monthly charge in the amount of $.01 per thousand dollars of face amount under the Policy or any optional riders; (4) the charge for optional insurance benefits added by riders; and (5) the monthly administrative expense charge of $4.50 per Policy. Fortis Benefits reserves the right to raise the monthly administrative expense charge to not more than $7.50 per month and to impose an additional monthly administrative expense charge of up to $.13 per thousand dollars of face amount then in force. This charge will not exceed the amount permitted by Rule 6e–3(T)(b)(13)(iii)(A).

22. A daily charge at an annual rate of .90% of the average daily value of the net assets in Account C that are attributable to the policies is made for mortality and expense risks assumed by Fortis Benefits.

23. Fortis Benefits reserves the right to deduct (1) charges to defray its administrative expenses in effecting transfers of Policy value or partial withdrawals and (2) charges for any federal income taxes that Fortis Benefits may incur.

Applicants' Request for Relief and Legal Analysis

1. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(1) of the 1940 Act to the extent necessary to permit the deduction of monthly and daily charges to recover Advances.

2. Section 27(c)(2) provides that an investment company may not offer periodic payment plan certificates unless, among other things, the proceeds of all payments (other than the sales load) on such certificates are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1) and are held by that trustee or custodian under an indenture or agreement containing, in substance, the provisions required by section 26(a)(2).

3. Section 26(a)(2)(C) provides that no payments to the depositor of, or principal underwriter for, a registered unit investment trust (or any affiliated person or agent of such depositor or principal underwriter) shall be allowed the trustee or custodian as an expense, except for payment of a fee not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian.

4. Applicants submit that the recovery of all or part of an Advance returns to Fortis Benefits its own assets and that such recovery is not a payment of the sort addressed by section 26(a)(2)(C). Applicants state that, in this respect, deductions to recover Advances are similar to the removal from separate account assets of amounts necessary to secure Policy loans, or to secure additional Policy loans that are made automatically in order to "capitalize" loan interest that the Policy owner has not otherwise paid. Similarly, deductions to recover Advances may reasonably be viewed as capital adjustments rather than a charge or expense subject to section 26(a)(2)(C).

5. Section 27(c)(2) requires only that the "proceeds" of "payments" (*i.e.*, amounts paid by the investor) be deposited with a trustee and held subject to the requirements of section 27. Applicants believe that the statutory language lends support to the conclusion that recovery of Advances is outside the ambit of those provisions, insofar as the Advance does not constitute "proceeds" of "payments" made by an investor, but is rather an advance made by Fortis Benefits from its own funds.

6. Advances provide a significant potential benefit to eligible Policy owners by increasing the amount available to earn a return for the Policy owner. In many cases, an Advance will not be recovered or will be partially recovered because no CDSC for unrecovered Advances is imposed upon death of the insured, surrender, withdrawal or lapse. The total amount deducted to recover Advances under any Policy will never exceed the amount of Advances actually paid.

7. The Policy owner receives a further benefit during the time when deductions for Advances are being made because similar monthly and daily deductions for premium taxes and sales charges are suspended. Deferred premium tax and sales charges are equal to the monthly and daily deductions for Advances, assuming the 9.8% maximum on the monthly and daily premium taxes and sales charge deductions would not have otherwise been reached.

The monthly and daily deductions for premium taxes and sales charges resume after Advances have been fully

recovered, unless total deductions for premium taxes and sales charges have reached 9.8% of all premiums paid to date. The Policy owner is not deemed to have "paid" any deferred periodic premium tax and sales charges that otherwise would have been deducted during the period when deductions to recover Advances were being made. The deferral of these charges is a significant benefit that enhances the value of the Advance feature by tending to offset the deductions made to recover Advances.

8. An Advance will increase the Policy value and, consequently, may increase the amount of certain charges that are deducted on the basis of a percentage of Account C or Fortis Series assets: *i.e,* the mortality and expense risk charge and the Fortis Series investment advisory fee. The increased asset-based charges are the price paid for the opportunity of having amounts attributable to the transaction participate in the investment performance of Account C. Increased asset-based charges can be avoided in each case by allocating the Policy value to the General Account, rather than to Account C.

9. There is no assurance that separate account investment performance earned on Advances will be sufficient to offset the additional asset-based charges resulting from the Advances. The timing of the Advances and the deductions to recover them are factors that indirectly determine the amount of return that would be credited. A Policy owner who wants to be assured of earning a rate of return greater than the rate of asset-based charges can allocate amounts attributable to Advances to the General Account.

10. Advances involve various costs to Fortis Benefits, including the costs of amounts advanced and developing and administering the Advance feature. Even if the development and administration costs are disregarded, there is no reasonable set of assumptions under which (1) the value to Fortis Benefits of (a) the revenues from deductions for Advances plus (b) any increased mortality and expense risk charge and advisory fee revenues resulting from Advances would exceed (2) Fortis Benefits' additional costs associated with Advances. Advances and related charges thus could not be said to involve any "back door" attempt to impose additional charges to Policy owners.

11. Deductions for Advances are designed to reimburse Fortis Benefits for amounts advanced out of its own funds to the Policy owner. Deductions for Advances do not contain hidden charges, are not intended to finance sales expenses, and do not result in profits to Fortis Benefits. Such deductions, as well as the possibility of increased asset-based charges, will be fully disclosed in the prospectus for the policies.

12. Advances and Bonuses are benefits intended to attract prospective purchasers and encourage Policy owners to retain and make regular premium payments in order to enhance Fortis Benefits' financial strength and stability and the security of the Policy owners' investment in and coverage under the policies. Life insurance policies are typically unprofitable to an insurance company in the policies' early years because of high initial issuance costs and relatively small asset-based revenues. To the extent that the objectives of the Advances and Bonuses are achieved, Fortis Benefits may not need to raise its charges for cost of insurance and administrative expenses for certain Policy features; rather, Fortis Benefits may be able to offer additional investment options or reduce charges under policies in the future. Policy owners also benefit from lower expense ratios of the management investment company funding the policies as a result of increased assets. Insufficient sales or poor persistency also can produce a small or non-diverse pool of mortality risks and, thus, expose Fortis Benefits to the possibility of erratic mortality experience. This problem is exacerbated because policies tend not to be surrendered when the insured is in poor health. A high rate of surrenders would thus tend to decrease the overall quality of the mortality pool represented by the policies.

13. Advances and Bonuses also will promote fairness between persisting and surrendering Policy owners. Persisting Policy owners make substantial premium payments and accumulate substantial amounts of cash value and, thus, generate greater profits for Fortis Benefits. It is therefore equitable for persisting Policy owners to receive additional benefits in the form of Advances and Bonuses.

14. Fortis Benefits has designed Advances and its method of operation so as to address any state regulatory concerns. Fortis Benefits has specifically designed the Advances to avoid any substantial discontinuities in projected values. All sales illustrations used by Fortis Benefits will specifically disclose the amount of any Advances and the rate of any Bonuses are not contingent on Fortis Benefits actually earning profits, and Fortis Benefits will establish current reserves for planned Advances.

15. Applicants also request exemptions from sections 2(a)(32), 22(c), 27(c)(1) and 27(d) and Rules 6e-3(T)(b)(12), 6e-3(T)(b)(13) and 22c-1 to the extent necessary to permit the amount of any premium tax charges that have not been previously collected by means of a deduction from Policy value to be included in the Surrender Charge.

16. Sections 2(a)(32), 27(c)(1) and 27(d), in pertinent part and in effect, prohibit Applicants from selling interests under a Policy unless they are redeemable securities entitling a Policy owner, upon surrender, to receive his or her proportionate share of Account C's current net assets. Section 2(a)(32) defines a "redeemable security" as any security which entitles the holder, upon its presentation to the issuer, to receive approximately a proportionate share of the issuer's current net asset value, or the cash equivalent thereof. Section 27(c)(1) provides that no issuer of a periodic payment plan certificate shall sell such certificate unless the certificate is a "redeemable security." Section 27(d), in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances and recover certain amounts of sales charges.

Rule 22c-1, adopted pursuant to section 22(c), in pertinent part and in effect, prohibits Applicants from redeeming interest under a Policy except at a price based on the current net asset value that is next computed after receipt of the request for full or parital redemption of interests under the policy.

Rule 6e-3(T)(b)(12) and 6e-3(T)(b)(13) provide exemptions from section 22(c) and 27(c)(1), and Rule 6e-3(T)(b)(13) provides an exemption from section 27(d), to the extent necessary for the payment of a flexible contract's cash value to be regarded as satisfying the requirements of those provisions if specified conditions are satisfied. Applicants represent that the Policies satisfy all of such conditions.

17. The method adopted under the Policy for deducting all or part of the charges for premium taxes is more favorable to investors because more Policy value is available to earn a return for the investor. Applicants represent that (1) no premium tax charge will be designed to yield a profit, (2) the total amount charged for premium taxes, including any amounts that may subsequently be deducted from premium payments, will be no greater than if all such charges were taken from premiums when paid, and (3) the premium tax charges will not take into account the "time value" of money, which would increase the charge to factor in the investment cost to Fortis Benefits of deferring collection of the charge.

18. Applicants further request an exemption from the "stair step" requirements of section 27(a)(3) and Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(d)(1)(ii).

19. Section 27(a)(3), in pertinent part, prohibits the sale of the Policies if the sales load deducted from any one of the first twelve monthly payments thereon "exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment."

20. Rule 6e–3(T)(b)(13)(ii), in relevant part, provides an exemption from section 27(a)(3), provided that the proportionate amount of sales load deducted from any payment shall not exceed the proportionate amount deducted from any prior payment." Rule 6e–3(T)(d)(1)(iii)(A) provides, in relevant part, that, with respect to sales charges deducted other than from premiums (excluding asset-based sales charges), Rule 6e–3(T)(b)(13)(ii) is deemed satisfied if "the amount of sales load deducted pursuant to any method . . . does not exceed the proportionate amount of sales load deducted prior thereto pursuant to the same method." Rule 6e–3(T)(d)(1)(ii)(B), in pertinent part, provides comparable relief for asset-based sales charges, provided that "the percentage of assets taken as sales load does not exceed any of the percentages previously taken pursuant to the same method."

21. Applicants request an exemption from these "stair step" requirements to the extent necessary because of the following three aspects of the policies. First, part of the $4.00 monthly charge deducted pursuant to each Policy is a sales charge. While this charge will not change from month-to-month, except in the case of a reduction as a result of a transfer from another plan of insurance, it will vary from month-to-month as a percentage of premiums paid and as a percentage of the Policy value. Assessing part of the sales charge as a flat monthly deduction rather than deducting it from premium payments is beneficial to Policy owners because (1) a greater amount is available to earn an investment return, (2) deductions will be more predictable than deducting the entire sales charge through a daily percentage charge, and (3) there will be an enhanced ability to make plans based on expected amounts of sales charge deductions. Applicants are requesting relief to eliminate any uncertainty as to the application of the stair step provisions in this context.

22. Second, the monthly and daily sales charge deductions may cease for certain periods of time and subsequently be resumed. These charges are suspended when deductions to recover Advances are being made and when the maximum amount of such charges, as a percentage of premium payments, has been reached. Sales charges will also cease if additional deductions would cause sales charges to exceed permitted maximums, as a percentage of premiums actually paid. These situations create a question regarding compliance with the requirements of Rule 6e–3(T)(d)(1)(ii)(A) and (B), respectively, that the proportionate or percentage amount of sales charges deducted not exceed the proportionate or percentage amount previously deducted pursuant to this same method.

23. Applicants assert that, if section 27(a)(3) and the related provisions of Rule 6e–3(T) are interpreted to prevent the resumption of sales charge deductions from contract assets, the utility of policy designs providing for such deductions would be greatly reduced. Deducting part of the sales charges from Policy value, rather than from premium payments, is advantageous to Policy owners because more assets are put to work as Policy value with the potential of earning a return for the Policy owner's benefit. Applicants are requesting relief in order to eliminate any uncertainty as to the applicability of the stair step provisions in these circumstances.

24. Third, Rule 6e–3(T)(c)(4) defines "sales load" for any contract period as the excess of premium payments over changes in "cash value" (other than from investment performance) and certain enumerated charges. An increase or decrease in a Policy's cash value resulting from the payment of an Advance or a Bonus or from subsequent deductions to recover an Advance could be deemed to result in an increase or decrease in the otherwise applicable sales load for the contract period in which the transaction occurs. The stair step provisions could apply because the operation of the Advance or Bonus could cause such sales load to be at a higher rate than in a preceding period or at a lower rate than in a subsequent period. Applicants submit that the Advances and Bonuses provide a significant potential benefit to Policy owners and that the policies' charge structure complies with Rules 6e–3(T)(b)(13)(ii) and (d)(1)(ii).

25. The stair step issues under the policies result from the imposition of deferred sales charges in the form of monthly and daily deductions and, in the case of policies that are surrendered or lapse before a certain time, the Surrender Charge. The stair step issues under the policies do not result from early deduction of front-end charges. No sales charges will be deducted from premiums. Although sales charges will be deducted through several different types of deductions, the rate of these charges will never increase.

Conclusion

Section 6(c) of the 1940 Act, in pertinent part, provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction, or any classes thereof from any provisions of the 1940 Act or rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For all the reasons set forth above, Applicants submit that their requested exemptive relief meets these standards for exemptive relief under section 6(c) and, therefore, should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19472 Filed 8–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18884; 812–7924]

General Securities, Incorporated, et al.; Application

August 7, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: General Securities, Incorporated (the "Investment Company"), Craig-Hallum, Inc. (the "Adviser") and Hamilton Investments, Inc. ("Hamilton").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemption from section 15(a).

SUMMARY OF APPLICATION: Applicants seek an order that would permit (i) implementation, without shareholder approval, of a new investment advisory agreement between the Investment Company and the Adviser, as approved by the Investment Company's Board of Directors, and (ii) the Adviser to receive, subject to shareholder approval, fees earned under the new agreement from the date on which CH Holdings

Corporation ("Newco"), a wholly-owned subsidiary of Hamilton, merges with and into Craig-Hallum Corporation ("CH Corp."), the parent corporation of the Adviser, to the date the new investment advisory agreement is approved or disapproved by the Investment Company's shareholders, which period shall be no longer than 120 days (the "Interim Period").

FILING DATES: The application was filed on May 20, 1992 and amended on July 9, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 1, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Investment Company and Adviser, c/o Charles P. Moorse, Esq., Lindquist & Vennum, 4200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402. Hamilton, c/o Allison Shank, Esq., Hamilton Investments, Inc., 2 North LaSalle Street, Chicago, IL 60602.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272–7779 or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Investment Company is registered under the Act as an open-end management investment company. Its investment objective is to select securities with a view to possible long-term capital appreciation and security of principal. At May 31, 1992, the Investment Company's total net assets were $25,829,457.

2. The Adviser, a wholly-owned subsidiary of CH Corp., is registered as an investment adviser under the Investment Advisers Act of 1940 and as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act"). The Adviser, through its approximately 165 employees, acts as the Investment Company's investment adviser, principal underwriter and distributor, registrar, and transfer agent. The advisory fees paid by the Investment Company are 1% per annum of average daily net assets up to $15,000,000, ¾ of 1% per annum for the next $15,000,000 of average daily net assets, and ½ of 1 % per annum of average daily net assets over $30,000,000.

3. Hamilton is a registered broker-dealer under the Exchange Act and a wholly-owned subsidiary of Household International, Inc., a financial services company with businesses in consumer finance, banking, and life insurance. Newco, a Delaware corporation, is a wholly-owned subsidiary of Hamilton.

4. Applicants seek an exemption from section 15(a) to permit, during the Interim Period, (i) implementation, without shareholder approval, of a new investment advisory agreement (the "New Agreement") between the Investment Company and the Adviser, and (ii) the Adviser to receive, subject to shareholder approval, fees earned under the New Agreement.

5. In February 1992, representatives of Hamilton and CH Corp. met to discuss a possible transaction between the two. On March 20, 1992, Hamilton and CH Corp. entered into a letter of intent that contemplated a merger of Hamilton or one of its affiliates with CH Corp. On May 4, 1992, the Board of Directors of CH Corp. approved and executed an Agreement and Plan of Merger, and issued a press release to announce the transaction.

6. Management of CH Corp. and the Adviser decided that the interests of the shareholders of CH Corp. and the Investment Company would best be served if consummation of the merger were not subject to approval by the Investment Company's shareholders or contingent upon the relief requested by this application since such delay and protracted uncertainty as to the future of the Adviser could cause defections of the Adviser's registered representatives. A large number of such defections might threaten the Adviser's viability and diminish the services it provides to the Investment Company.

7. On June 5, 1992, pursuant to the Agreement and Plan of Merger, Newco merged with and into CH Corp., the surviving corporation, became a wholly-owned subsidiary of Hamilton. The Adviser remains a wholly-owned subsidiary of CH Corp., and continues to operate as a separate subsidiary in substantially the same manner as it did before the merger.

8. Applicants state that it was not possible for the Investment Company to obtain shareholder approval of the New Agreement prior to the merger. The Investment Company did not have notice of the proposed transaction, and shareholders meetings require preparation and clearance of proxy materials as well as a sufficient solicitation period to obtain a quorum.

9. On May 19, 1992, five members of the Investment Company's Board of Directors, including a majority who are not interested persons (the "Independent Directors"), as defined in section 2(a)(19) of the Act, of the Investment Company, concluded unanimously, with the advice and assistance of counsel, that it would be in the best interests of the Investment Company and its shareholders to apply for an order of the Commission as a necessary step in implementing a new advisory agreement during the Interim Period. Applicants filed an application with the Commission on May 20, 1992.

10. On May 27, 1992, the Investment Company's Board of Directors, including the Independent Directors, unanimously approved the New Agreement between the Investment Company and the Adviser. The New Agreement has the same terms and conditions as the previous advisory agreement. In addition, the Adviser and Hamilton assured the Independent Directors that, during the Interim Period, the Investment Company will receive the same investment advisory services, provided in the same manner by essentially the same personnel, as it received prior to the merger.

11. Applicants represent that for a period of three years after the merger, at least 75% of the members of the Board of Directors of the Investment Company will be Independent Directors. In addition, applicants represent that the merger will not impose an unfair burden on the Investment Company.

Applicants' Legal Conclusions

1. As a result of the merger, Hamilton owns 100% of CH Corp., which in turn owns 100% of the outstanding voting securities of the Adviser. Thus, the merger may be deemed to have resulted in an assignment, within the meaning of section 2(a)(4), of the previous advisory agreement between the Adviser and the Investment Company. Under section 2(a)(4), an assignment includes any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting

securities by a security holder of the assignor.

2. Under section 15(a), it is unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such investment company. Further, section 15(a) requires that such written contract provide for automatic termination in the event of its assignment. Thus, the previous advisory agreement between the Adviser and the Investment Company may be deemed to have terminated automatically as of the date of the merger.

3. Applicants believe that the relief they request from the provision of section 15(a) that requires prior shareholder approval of an investment advisory contract is reasonable, necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the relief they seek is within the spirit of rule 15a–4, which sets forth the circumstances under which, following an assignment of an investment advisory contract, the investment adviser may continue to serve for 120 days at the previous compensation rate. Applicants submit that there will be no diminution in the scope or quality of services provided to the Investment Company during the Interim Period. In addition, applicants submit that the assignment was not foreseeable by the Investment Company or the Adviser. The form and timing of the merger were determined in response to a number of factors beyond the scope of the Act and not related to the Investment Company or the Adviser. The extremely rapid culmination of the negotiations between CH Corp. and Hamilton did not present, and the form of transaction deemed most appropriate did not permit, an opportunity to secure approval of the New Agreement by shareholders of the Investment Company prior to the merger. Finally, applicants submit that to deprive the Adviser of its customary fees for the Interim Period would be a harsh and unreasonable penalty to attach to the merger transaction.

Applicants' Conditions

1. The New Agreement implemented during the Interim Period has the same terms and conditions as the previous advisory agreement.

2. Fees earned by the Adviser and paid by the Investment Company during the Interim Period in accordance with the terms of the New Agreement will be maintained in an interest bearing escrow account, and amounts in the account will be paid to (a) the Adviser, only upon approval by the Investment Company's shareholders, or (b) the Investment Company, in the absence of such approval.

3. The Adviser will pay the costs of preparing and filing this application and the costs of holding all special meetings of the Investment Company's shareholders necessitated by the assignment, including the cost of proxy solicitations. Additionally, the Adviser will pay the incremental costs necessitated by the Assignment in connection with meetings of the Investment Company's shareholders which otherwise would be held by the Investment Company.

4. The Adviser will take all appropriate steps so that the scope and quality of advisory and other services provided to the Investment Company during the Interim Period will be at least equivalent, in the judgment of the Investment Company's Board of Directors, including a majority of the Independent Directors, to the scope and quality of services provided previously. In the event of any material change in personnel providing services pursuant to the advisory agreement, the Adviser will appraise and consult with the Investment Company's Board of Directors in order to assure that they, including a majority of the Independent Directors, are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19469 Filed 8–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18889; 812–7857]

Jupiter Industries, Inc.; Application

August 11, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Approval of Stock Option Plan under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

APPLICANT: Jupiter Industries, Inc.

RELEVANT ACT SECTIONS: Section 61(a)(3)(B).

SUMMARY OF APPLICATION: Applicant seeks an order approving applicant's Stock Option Plan for Non-Employee Directors and the grant of certain stock options thereunder.

FILING DATES: The application was filed on January 22, 1992. Amendments were filed on February 21, 1992, and July 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 8, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 5454 Wisconsin Avenue, Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a business development company within the meaning of section 2(a)(48) of the Act. Applicant seeks an order pursuant to section 61(a)(3)(B) of the Act approving its Stock Option Plan for Non-Employee Directors (the "Non-Qualified Stock Option Plan") and the automatic grant thereunder of options to purchase shares of applicant's common stock (a) on the later of the date of approval of such plan by (i) applicant's shareholders and (ii) order of the SEC (the "Plan Approval Date"), to each director of applicant who is neither an officer nor an employee of applicant ("non-employee director"), and (b) subsequent to the Plan Approval Date, to each new non-employee director of applicant who may be elected or appointed in the future to applicant's board of directors. Applicant will submit the Non-Qualified Stock Option Plan to applicant's shareholders for their approval at the next annual meeting of shareholders to be held on August 21, 1992.

2. Applicant states that its primary investment objective is to achieve long-term capital appreciation through investing in new and developing companies and in companies which are experiencing financial difficulties. Applicant does not have an external "investment adviser" within the meaning of the Act; applicant's investment decisions are made by its officers and directors. Applicant typically provides a substantial commitment of capital to its investee companies and makes available to them significant managerial assistance.

3. Applicant's officers and employees receive cash compensation and benefits in the form of salaries, medical and life insurance benefits, and paid vacation and holiday time. An employee stock option plan provides officers and key employees (including employee directors) with the opportunity to acquire equity securities of the applicant. In addition, it has no warrants, options, or rights to purchase its voting securities outstanding, other than those granted (or to be granted as of the Plan Approval Date) to its directors, officers, and employees pursuant to the executive compensation plans described in the application.

4. Grants of options under the proposed Non-Qualified Stock Option Plan would be subject to the per centum limitations on outstanding rights, options, and warrants established by section 61(a)(3)(B), and would be limited to 5,000 shares of the applicant's common stock to each non-employee director. In addition, pursuant to the terms of the plan, 50% of the options would vest and become exercisable six months following the date of grant, and the remaining 50% of the options would vest and become exercisable ratably on a monthly basis over an eighteen-month period beginning on the seven-month anniversary of the date of grant. Options would be exercisable at any time after they become exercisable until the tenth anniversary of the date of grant, provided that, as more fully described in the application, if a non-employee director left applicant for any reason other than death, the options would terminate, and if a non-employee director died, the options would be exercisable within a prescribed time period. The exercise price of the options would be 100% of the fair market value of applicant's common stock on the date of grant. On the Plan Approval Date, the aggregate amount of applicant's voting securities that would result from the exercise of all options issued or issuable under the Non-Qualified Stock Option Plan and applicant's existing employee stock option plan would be 200,000 shares, or approximately 19.7% of the 1,013,370 shares of applicant's common stock outstanding.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a business development company to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a business development company may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no such market value exists, the then-current net asset value of the underlying securities; (c) the proposal to issue such options is authorized by the company's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the company receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the company does not have a profit-sharing plan described in section 57(n) of the Act.

3. In addition, section 61(a)(3) of the Act provides that the amount of the company's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25 per centum of the company's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to such company's directors, officers, and employees pursuant to an executive compensation plan would exceed 15 per centum of the company's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options and rights at the time of issuance shall not exceed 20 per centum of the outstanding voting securities of such company.

4. Applicant asserts that its directors are actively involved in the oversight of applicant's affairs, and that it relies extensively on the judgment and experience of the directors. In addition, applicant represents that one or more of its officers and directors often are elected to the boards of directors of portfolio companies. Accordingly, applicant believes that the skill and experience of its management and directors are critical to its success. Applicant states that in order to attract and retain qualified personnel, it must provide non-employee directors with incentives in the form of an executive compensation program, as contemplated by section 61(a).

5. Applicant asserts that the Non-Qualified Stock Option Plan and the stock options to be granted automatically to applicant's non-employee directors and the stock options to be granted automatically to future non-employee directors of applicant pursuant to such plan would meet all applicable requirements of the Act: (a) The options would expire by their terms within ten years; (b) the exercise price of the options would not be less than the current market value of the underlying securities at the date of the issuance of the options; (c) the proposal to issue the options would be authorized by applicant's shareholders; (d) the options would not be transferable except for disposition by gift, will or intestacy; (e) applicant does not have an investment adviser; and (f) applicant does not have a profit-sharing plan described in section 57(n) of the Act.[1] In addition, the total amount of voting securities that would result from the exercise of all outstanding warrants, options and rights at the time of issuance would not exceed 20 per centum of the outstanding voting securities of applicant.

6. Applicant submits that the terms of the Non-Qualified Stock Option Plan and the stock options to be granted automatically to applicant's non-employee directors on the Plan Approval Date and the options to purchase shares of its common stock to be granted automatically to each non-employee director who joins applicant's board in the future are fair and reasonable and do not involve any overreaching of applicant or its shareholders. The total number of shares for which options would be granted under the Non-Qualified Stock Option Plan would depend on whether there are changes in applicant's board of directors. However, if all five non-employee directors currently serving on

[1] Applicant states that it should not be viewed as having a profit-sharing plan as described in section 57(n) of the Act, because contributions to or payments under its compensation plans are not based upon applicant's profits or financial performance.

applicant's board of directors exercised all of the options proposed to be granted to them, 25,000 shares, or approximately 2.5% of the applicant's outstanding common stock, would have been issued under the Non-Qualified Stock Option Plan. Given this relatively small amount of stock, applicant submits that the exercise of the options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of the common stock of the applicant.

7. Applicant asserts that because 50% of the stock options granted to a non-employee director would vest six months following the date of grant, and the remaining 50% would vest ratably on a monthly basis over the next eighteen months, the plan would provide non-employee directors with incentives to remain with applicant. In addition, applicant contends that because the options granted pursuant to the plan have no value unless the price of applicant's common stock exceeds the exercise price of the stock option, the options provide significant incentives to its non-employee directors to devote their best efforts to the success of applicant's business. Applicant also represents that the options provide a means for its directors to increase their ownership interest in applicant, thereby helping to ensure a closer identification of their interests with those of applicant and its shareholders. Applicant contends that incentives in the form of such stock options enable it to maintain continuity in its board membership and to attract and retain as directors the highly experienced, successful, and dedicated business and professional people that are critical to its success as a business development company and to the success of its investee companies.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19467 Filed 8-14-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25602]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 7, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 31, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective

Arkansas Power & Light Company (70-7834)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, an electric public-utility subsidiary company of Energy Corporation, a registered holding company, has filed a post-effective amendment to its application-declaration filed with this Commission under sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder. The Commission first issued a notice of the filing of the post-effective amendment on July 2, 1992 (HCAR No. 25569).

By order dated March 20, 1991 (HCAR No. 25278) ("Order"), the Commission, among other things, authorized AP&L, for the period during which any shares of the new preferred stock [1] are outstanding to: (1) Redeem shares of its outstanding New Preferred Stock to be issued under the exemptive provisions of Rule 52, in accordance with any mandatory or optional redemption provisions established at the time of the New Preferred Stock's initial issuance; (2) redeem (or purchase in lieu of redemption) outstanding New Preferred Stock, in accordance with the sinking fund provisions established at the time of the New Preferred Stock's initial issuance. These redemption provisions applied to the New Preferred Stock that was issued through August 31, 1992.

AP&L now intends to issue $35 million of New Preferred Stock, through December 31, 1993, under the exemptive provisions of Rule 52 ("Remaining Stock"). For the period during which any shares of the Remaining Stock are outstanding, AP&L proposes to: (1) Redeem shares of its Remaining Stock, in accordance with any mandatory or optional redemption provisions established at the time of the Remaining Stock's initial issuance; and (2) redeem (or purchase in lieu of redemption) outstanding Remaining Stock, in accordance with the sinking fund provisions established at the time of the Remaining Stock's initial issuance.

In addition, AP&L was further authorized by the Order to acquire from time-to-time prior to August 31, 1992, in whole or in part, prior to their respective maturities, certain of AP&L's outstanding securities, up to and including: (1) $350 million aggregate principal amount of one or more series of AP&L's outstanding first mortgage bonds ("First Mortgage Bonds"); (2) $175 million aggregate principal amount of one or more series of the outstanding pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit; and (3) $150 million aggregate par value of one or more series of AP&L's outstanding preferred stock. AP&L has acquired $21.45 million of the First Mortgage Bonds leaving a balance of $328.55 million of First Mortgage Bonds to be acquired.

AP&L now proposes to extend its authorization, from August 31, 1992 to December 31, 1993 to acquire not to exceed: (1) $328.55 million aggregate principal amount of the outstanding First Mortgage Bonds; (2) $175 million aggregate principal amount of one or more series of the outstanding pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit; and (3) $150 million aggregate par value of one or more series of AP&L's outstanding preferred stock.

Consolidated Natural Gas Co. (70-7909)

Consolidated Natural Gas Co. ("Consolidated"), a registered holding company, and its wholly-owned, nonutility subsidiary, CNG Energy Company ("CNG Energy"), both at the CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222-3199, and Lakewood Cogeneration, L.P. ("Partnership"), 100 Clinton Square,

[1] AP&L was authorized to issue and sell shares of its preferred stock, $.01 par value ("Class A Preferred"). The Class A Preferred has an aggregate price payable in the event of involuntary liquidation ("Liquidation Value") not to exceed: (1) $100 million, and/or (2) four million shares of AP&L's preferred stock, cumulative, par value $25; and/or (3) one million shares of AP&L's preferred stock, cumulative, par value $100; provided, however, that the aggregate of the Liquidation Value of the Class A Preferred issued, together with the total par value of the other classes issued, shall not exceed $100 million (collectively, "New Preferred Stock").

Syracuse, New York 13202–1049, (collectively, "Applicants") have filed a post-effective amendment to their application-declaration under sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By supplemental order dated December 3, 1986 (HCAR No. 24253) ("1986 Order"), CNG Energy was authorized to invest up to $100 million in qualifying cogeneration facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978 and the rules promulgated thereunder by the Federal Energy Regulatory Commission. By supplemental order dated June 13, 1989 (HCAR No. 24902) ("1989 Order"), CNG Energy was authorized to invest in a QF project in Lakewood, New Jersey ("Lakewood Project"). Pursuant to the 1986 Order and the 1989 Order, CNG Energy entered into the Partnership with two nonaffiliates (collectively, "Partners"), which took over the development, financing, construction, ownership and operation of the Lakewood Project. The authority under both supplemental orders expired on December 31, 1991.

The Applicants now propose to fund up to $50 million, through December 31, 1996, to the Lakewood project. The Applicants propose to channel such funding from Consolidated to CNG Energy, from CNG energy to CNG Lakewood, Inc. ("CNG Lakewood") (to be formed as a wholly-owned, special-purpose subsidiary of CNG Energy), from CNG Lakewood to the Partnership, and from the Partnership to the Project, as described below. (Alternatively, CNG Energy may bypass CNG Lakewood and invest directly in the Partnership.) The funds will be passed from entity to entity through any one or a combination of (i) common stock acquisitions, (ii) open account advances ("Advances"), or (iii) long-term loans ("Long-Term Loans"), also as described below. The amount of financings and other obligations, as described below, will not exceed $50 million at any one level. In order to facilitate such financing methods, it is also requested that Consolidated, CNG Energy and CNG Lakewood be authorized to make guarantees, obtain letters of credit and deliver accommodation letters (requiring the parent to provide its subsidiary with sufficient capital to fulfill its obligations) ("Keep Well Letter") (collectively, "Support Arrangements") with respect to the obligations of CNG Energy and/or CNG Lakewood and the Partnership, as the case may be, as necessary to support debt service obligations (through the maintenance of the debt reserve requirements of the Partnership), equity contribution commitments and other Lakewood Project obligations. The Support Arrangements would be up to an amount that, when combined with equity contributions and investments in subordinated long-term notes (to be issued by the Partnership as part of a third-party financing facility, described below), will not exceed $50 million. It is estimated that a fee in an amount not exceeding one percent per annum would be paid with respect to the letters of credit, and the letters of credit may require recourse to Consolidated, CNG Energy or CNG Lakewood, as the case may be.

Each and every Advance and Long-Term Loan made pursuant to this application-declaration will have the same effective terms and interest rates ("Financing Terms"):

(1) Advances may be made to provide working capital and to finance the activities authorized by the Commission. Advances will be made under letter agreement and will be repaid on or before a date not more than one year from the date of the first Advance with interest at the same effective rate of interest as Consolidated's weighted average effective rate for commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding, the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York.

(2) Long-Term Loans shall be evidenced by long-term non-negotiable notes (documented by book entry only) maturing over a period of time (not in excess of 30 years) to be determined by the Officers of the lender (Consolidated, CNG Energy or CNG Lakewood, as the case may be), with the interest predicated on and equal to the effective cost of money to Consolidated obtained through the most recent of its long-term debt financing. In the event Consolidated does not issue long-term debt during the period June 1, 1992 through December 31, 1996, the proceeds of which are allocable to CNG Energy, long-term borrowing rates will be tied to debt issuances published in Salomon Brothers Inc. Bond Market Roundup or similar publication on the date nearest to the time of takedown. Such rate will be adjusted to match Consolidated's cost of borrowing if Consolidated subsequently issues long-term debt within one year of the date of takedown. Should Consolidated not issue long-term debt during the subsequent twelve-month period the proceeds of which are allocable to the borrower (CNG Energy, CNG Lakewood or the Partnership, as the case may be), the indicative rate at the time of takedown will be used for the life of the note.

It is proposed that: (i) CNG Energy obtain funds, through December 31, 1996, for the Lakewood Project and the Partnership through any one or a combination of (a) selling shares of CNG Energy common stock, $1,000 par value per share, to Consolidated, (b) taking out Advances from Consolidated; and (ii) Consolidated make Support Arrangements (Consolidated Support Arrangements").

CNG Energy proposes to make, from time to time through December 31, 1996: (i) capital contributions to the Partnership; (ii) Long-Term Loans to the Partnership and/or (iii) Support Arrangements (collectively, "CNG Energy Commitments").

CNG Energy also proposes to create and capitalize CNG Lakewood which may, in turn, make all or a pat of the investments in the Lakewood Project. It is proposed that, from time to time through December 31, 1996, CNG Lakewood obtain funds through: (i) The sale of up to 5,000 shares of CNG Lakewood common stock, $10,000 par value per share, to CNG Energy; (ii) Advances from CNG Energy; and/or (iii) Long-Term Loans from CNG Energy.

It is also proposed that CNG Lakewood make, from time to time through December 31, 1996: (i) Capital contributions to the Partnership; (ii) Long-Term Loans to the Partnership and/or (iii) Support Arrangements (collectively, "CNG Lakewood Commitments").

It is stated that CNG Energy expects that its return on its equity investment in the Lakewood Project will not be lower than 12%.

It is also proposed that the Partnership enter into financing with third parties for the construction and development of the Lakewood Project. The construction and development of the Lakewood Project during the construction phase will be financed by up to $262 million in construction financing ("Construction Financing") through non-recourse construction loans made to the Partnership pursuant to a credit facility ("Facility") with a group of banks and an institutional leader. The Facility will provide for Construction Financing during a construction phase of up to 28 months. Of the total $262 million in Construction Financing, $187 million will be provided by the bank lenders and $75 million by the institutional lender. A portion of the proceeds from the Construction Financing will be used to reimburse the Partners for previously made

expenditures with respect to the Lakewood Project.

At the inception of the permanent phase under the Facility, (i) $136 million of the bank portion of the Construction Financing and the entire $75 million of the institutional lender portion of the Construction Financing will be converted into non-recourse long-term loans having a term not exceeding 19 years ("Permanent Financing"), (ii) the Partnership will obtain from the Facility banks a $2 million revolving credit facility ("Working Capital Financing"), for an initial term of five years, for working capital, and (iii) the Partners will make their respective capital contributions to the Partnership (estimated to be an aggregate of $51 million or approximately $17.85 million in the case of CNG Energy or CNG Lakewood, as the case may be). Any difference between the final cost of the Lakewood Project and the sum of the Permanent Financing loans and the Partner equity contributions may be covered by long-term loans from the Partners, for which the Partnership will issue subordinated long-term notes having a maturity not exceeding 30 years and bearing an interest rate not in excess of 15% per annum. To the extent that CNG Energy and/or Lakewood provide any such loans, the amount of such loans would not, when aggregated with the other investments in and obligations to the Partnership, exceed the $50 million authorization requested herein.

The interest rate on the bank borrowings will fluctuate at a set percentage spread over LIBOR (London Interbank Offered Rate), certificate of deposit or prime rates. The interest rate on institutional lender borrowings will be a fixed rate set at a percentage over the rate of 2 year and 15 year U.S. Treasury securities at the inception of the Construction Financing and Permanent Financing, respectively. Additionally, the Partnership's power agreement contains a provision allowing for adjustment in the capital charge based upon 15 year U.S. Treasury bond rates at the date of conversion from Construction Financing to Permanent Financing. The interest rate on the Working Capital Financing will fluctuate at a set percentage over prime rate. In no event will the set percentage over the base rate exceed 3.25% for the Construction Financing, Permanent Financing and Working Capital Financing.

As a condition to the conversion of the bank Construction Financing to Permanent Financing, the Partnership must hedge the interest rate in at least 75% of the $136 million of the bank long-term debt. The applicants propose that the Partnership enter into variable to fixed interest rate swap agreements ("Swaps") from time to time through December 31, 1996, in notational amounts that in the aggregate will not exceed $102 million (75% of $136 million). Under a Swap, the Partnership would agree to make payments to a counter-party, payable periodically in arrears, at a fixed rate of interest calculated on the notional amount. The counter-party would agree to make payments to the Partnership at a variable rate of interest calculated on the notional amount. The Swaps will be for terms that will not exceed 20 years. The Swaps will be for terms that will not exceed 20 years. The Swaps will have a fixed maximum interest rate of 13% per annum and generally would provide that the Partnership could terminate the agreement with the consent of the counter-party, with respect to which the Partnership may incur early termination payments which could be substantial under certain market conditions. The Partnership could be required to pay various fees and other expenses in connection with the Swaps and, in the event that an intermediary between the Partnership and the counter-party is required for the guarantee of payment obligations, the intermediary would require a fee, which would, however, not exceed 1% per annum on the notional amount. The Partnership believes it will be able to acquire the most favorable terms for the Swaps through negotiation with the counter-parties. It is consequently requested that the Swaps be exempt from the competitive bidding requirements of Rule 50 under the exception set forth in subsection (a)(5) thereof.

The Applicants request that the Construction Financing, Permanent Financing, Working Capital Financing and Swap transactions by the Partnership be exempt from section 6(a) of the Act pursuant to the provisions of section 6(b), with such exemption for the Working Capital Financing to terminate on the fifth anniversary of the date of the initial take-down of such financing.

The Applicants also propose, through December 31, 1992, that CNG Energy and/or CNG Lakewood acquire ("Acquisition") up to a 1% general partnership interest in the Partnership and up to an additional 33% limited partnership interest in the Partnership, in such amounts that the combined total partnership interests held by CNG Energy and/or CNG Lakewood will exceed neither 1% of total general partnership interests nor 34% total limited partnership interests. CNG Energy currently has a 1% limited partnership interest in the Partnership. Thus, following the Acquisition, CNG Energy's and/or CNG Lakewood's total partnership interests will not exceed 35% of the aggregate partnership interests (including general and limited partnership interests) ("Interests") in the Partnership. On July 10, 1991, CNG Energy, pursuant to the Partnership agreement of August 31, 1990, exercised an option ("Option") and incurred a legally binding obligation to acquire the Interests. The Acquisition will be effected without any additional payment of consideration. CNG Energy will assume the increased obligations to (and will receive the additional potential benefits from) the Partnership that accompanies the Acquisition. The current Partnership agreement will be restated to reflect the changed ownership composition prior to the closing date on the Lakewood Project financing. It is stated that the Acquisition will close on or before December 31, 1992. The Interests will be acquired from HYDRA-CO, a wholly owned subsidiary of Niagara Mohawk Power Corporation, a public-utility holding company exempt from the Act pursuant to section 3(a)(2) and Rule 2 thereunder.

Public Service Company of New Hampshire (70-8036)

Public Service Company of New Hampshire ("PSNH"), 1000 Elm Street, Manchester, New Hampshire 03101, an electric utility company subsidiary of Northeast Utilities ("Northeast"), a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

In a series of transactions not jurisdictional under the Act at the time, the Business Finance Authority of the State of New Hampshire (formerly, The Industrial Development Authority of the State of New Hampshire) issued five series of pollution control revenue bonds ("Bonds") for financing PSNH's share of the cost of constructing certain pollution control, sewage, and solid waste disposal facilities at the Seabrook Nuclear Electric Generating Station, Unit No. 1. The Bonds included two series of taxable pollution control revenue bonds: (i) The $114,500,000 Pollution Control Revenue Bonds (Public Service Company of New Hampshire Project—1991 Taxable Series D Bonds) ("Series D Bonds"); and (ii) the $114,500,000 Pollution Control Revenue Bonds (Public Service Company of New Hampshire Project—1991 Taxable Series

E Bonds) ("Series E Bonds") (collectively, "Taxable Bonds").

In order to improve the credit ratings of, and to support, the Taxable Bonds, PSNH obtained two letters of credit from Citibank, N.A. ("Citibank") one for each series of the Taxable Bonds. Since the issuance of the Taxable Bonds, Citibank's rating in the financial markets has deteriorated. In addition, PSNH states that it has been advised by remarketing agents that: (i) Many institutional investors that otherwise would be interested in purchasing the Taxable Bonds will not purchase securities secured by letters of credit issued by Citibank; and (ii) those investors that are still willing to purchase the Taxable Bonds are demanding an interest rate premium that is causing PSNH's effective interest cost to be higher than it would otherwise be.

PSNH now proposes to replace the Citibank letter of credit for the Series D Bonds with a substitute letter of credit issued by Barclays Bank PLC, New York Branch ("Barclays"). The Barclays letter of credit would be issued in the amount of $121,014,000, representing principal in the amount of $114,500,000 and interest in the amount of $6,514,000 calculated at the maximum rate of 16% for 128 days. The Barclays letter of credit would expire three years from its date of issuance unless terminated earlier pursuant to its terms, and it would be issued pursuant to a Series D Letter of Credit and Reimbursement Agreement ("Barclays Reimbursement Agreement") between Barclays and PSNH. The proposed credit facility substitution will be carried out on or before December 31, 1992.

Under the Barclays Reimbursement Agreement, PSNH would be obligated: To pay annual letter of credit commissions and fronting and participation fees at rates aggregating approximately 0.99072% per annum (based upon the amount available to be drawn under the Barclays letter of credit on account of principal); to pay certain transfer, drawing, cancellation and other fees; to comply with certain business covenants that will be substantially similar to those contained in the reimbursement agreements for the Citibank letters of credit; and, to reimburse Barclays for any amounts drawn under the Barclays letter of credit. The Barclays Reimbursement Agreement will provide that all letter of credit drawings other than drawings to pay the principal portion of the purchase price for unremarketed bonds are immediately reimbursable by PSNH to Barclays. Drawings to pay the principal portion of the purchase price for unremarketed, tendered bonds would be treated as advances or loans by Barclays to PSNH ("Tender Advances"), payable upon the expiration of the Barclays letter of credit. Tender Advances would bear interest until paid at one of three rates specified in the Barclays Reimbursement Agreement: (i) Prime rate; (ii) certificate of deposit rates plus 0.875%; or (iii) the London Interbank Offered Rate plus 0.750%. Certain of PSNH's obligations to Barclays under the Barclays Reimbursement Agreement, including without limitation its obligation to reimburse Barclays for drawings made under the Barclays letter, would be evidenced and secured by PSNH's $114,500,000 First Mortgage Bonds, Series F.

PSNH also requests authorization to begin negotiations pursuant to an exception from the requirements of Rule 50, pursuant to subsection (a)(5) thereunder, with Barclays to document the terms of the substitution of the new letter of credit. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19468 Filed 8-14-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 7, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 42096.

Date filed: August 4, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 1, 1992.

Description: Application of Air Haiti, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, requests the Department to renew its foreign air carrier permit issued by Order 87-8-55; Air Haiti further invokes the automatic extension provisions of 14 CFR part 377.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-19478 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement; Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The Agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on September 18, 1992, beginning at 10:15 a.m. and ending at approximately 1 p.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by September 7, 1992, to the address shown below. If sufficient time is available, questions received after the September 7 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by September 7, 1992, and the issues to be discussed will be mailed to interested personnel by September 11, 1992, and will be available at the meeting.

ADDRESSES: Questions for the September 18 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, room 5401, 400 Seventh Street, SW., Washington, DC 20590. The meeting will be held at the Ramada Inn, 8270 Wickham Road, Romulus, Michigan 48174 (by the Detroit Metropolitan Airport).

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's rulemaking, research and enforcement programs, on September 18, 1992. The meeting will be held at the

Ramada Inn, 8270 Wickham Road, Romulus, Michigan. The purpose of the meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW., Washington DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366–1810, by COB September 9, 1992.

Issued: August 10, 1992.

Stanley Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 92–19479 Filed 8–14–92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0005.

Form Number: ATF F 3210.1.

Type of Review: Extension.

Title: Application for Restoration of Firearms and/or Explosives Privileges.

Description: Certain categories of persons are prohibited from possessing explosives and firearms. This form is the basis for ATF investigating the merits of an applicant to have his rights restored.

Respondents: Individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1512–0247.

Form Number: ATF REC 5000/2.

Type of Review: Extension.

Title: Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

Description: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Recordkeepers: 50.

Estimated Burden Hours Per Recordkeeper: 6 hours, 30 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 325 hours.

OMB Number: 1512–0399.

Form Number: ATF F 5400.21.

Type of Review: Extension.

Title: Application Permit for User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).

Description: This form is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,650.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 540 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW. Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–19519 Filed 8–14–92; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0908.

Form Number: IRS Forms 8282 and 8283.

Type of Review: Extension.

Title: Donee Information Return (Sale, Exchange or Other Disposition of Donated Property) (8282). Noncash Charitable Contributions (8283).

Description: Regulations section 1.170A–13(c) requires donors of property valued over $5,000 to file certain information with their return in order to receive the deduction. Donees must also inform the IRS if they dispose of the property within two years.

Respondents: Individuals or households, Businesses of other for-profit, Non-profit institutions.

Estimated Number of Respondents/Recordkeepers: 1,501,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form 8282:	
Recordkeeping	3 hours, 7 minutes.
Learning about the law or the form.	30 minutes.
Preparing the form and sending the form to the IRS.	34 minutes.
Form 8283:	
Recordkeeping	3 hours, 7 minutes.
Learning about the law or the form.	30 minutes.
Preparing the form	35 minutes.

Copying, assembling, and sending the form to the IRS.	35 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 2,899,180 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW. Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports, Management Officer.

[FR Doc. 92–19520 Filed 8–14–92; 8:45 am]

BILLING CODE 4830–01–M

Customs Service

[T.D. 92–79]

Customs Approval of Altol Petroleum Products Service, Inc., as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval of Altol Petroleum Products Service, Inc., as a commercial gauger.

SUMMARY: Altol Petroleum Products Service, Inc., of Guayanilla, Puerto Rico recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under § 151.13(f) of the Customs Regulations (19 CFR 151.13). Customs has determined that Altol Petroleum Products Service, Inc. meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, Altol Petroleum Products Service, Inc. is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: August 7, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–927–1060).

Dated: August 12, 1992.

Jimmy E. Harrell,

Acting Director, Office of Laboratories and Scientific Services.

[FR Doc. 92–19495 Filed 8–14–92; 8:45 am]

BILLING CODE 4820–02–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 159
Monday, August 17, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 34807.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Tuesday, August 25, 1992.

CHANGE IN THE AGENDA: The Commodity Futures Trading Commission has added to the agenda an Application of the Chicago Board of Trade for contract designation in Clean Air Options.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-19597 Filed 8-13-92; 10:11 am]
BILLING CODE 6351-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1451]

TIME AND DATE: 10 a.m. (EDT), August 19, 1992.

PLACE: Chattanooga Office Complex Auditorium, Chattanooga, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on July 29, 1992.

ACTION ITEMS:

New Business

A—Budget and Financing

A1. Fiscal Year 1993 Capital Budget Financed from Power Proceeds and Borrowings.

A2. Fiscal Year 1993 Operating Budget Financed from Power System Revenue.

C—Power

C1. Simultaneous Billing for Wholesale Power Distributors.

E—Real Property Transactions

E1. Sale of Permanent and Construction Easements Affecting Approximately 0.57 Acre of the Russellville, Kentucky, Power Service Center Property.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Supplement to Personal Services Contract No. TV-77636A with Robison & McAulay.

F3. Supplement to Personal Services Contract No. TV-82911V with RHR International Company.

F4. Supplement to Personal Services Contract No. TV-81877V with R.L. Cloud Associates, Inc.

F5. Supplement to Personal Services Contract No. TV-79584T with Fish and Wildlife Associates, Inc.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: August 12, 1992.

Edward S. Christenbury,
General Counsel and Secretary.

[FR Doc. 92-19598 Filed 8-13-92; 11:38 pm]
BILLING CODE 8120-08-M

federal register

Monday
August 17, 1992

Part II

Department of Commerce

National Institute of Standards and Technology

15 CFR Part 280

Procedures for Implementation of the Fastener Quality Act; Proposed Rule

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 280

[Docket No. 910778-1178]

RIN 0639-AA92

Procedures for Implementation of the Fastener Quality Act

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) requests comments on proposed regulations to implement the Fastener Quality Act (the Act), and announces the opening of a 75 day comment period for that purpose. The Act protects the public safety by requiring that certain fasteners which are sold in commerce conform to the specifications to which they are represented to be manufactured; providing for accreditation of laboratories engaged in fastener testing; and requiring inspection, testing and certification, in accordance with standardized methods, of fasteners covered by the Act.

The Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology (NIST), proposes to implement the Act by establishing these procedures, under which laboratories in compliance with the Act may be listed; laboratories may apply to NIST for accreditation; private laboratory accreditation entities (bodies) may apply to NIST for approval to accredit laboratories; and foreign laboratories accredited by their governments or by organizations recognized by the NIST Director under section 6(a)(1)(C) of the Act can be deemed to satisfy the laboratory accreditation requirements of the Act. The regulation also establishes within the Patent and Trademark Office (PTO) a recordation system to identify the manufacturer or distributor of covered fasteners to ensure that the fasteners may be traced to their manufacturers or private label distributors. In addition, the proposed procedures contain provisions on enforcement of the regulations, civil penalties, and hearing and appeal procedures.

Public comments are specifically requested on the following matters: The draft regulations implementing the Fastener Quality Act which are included in this notice; the Regulatory Impact Analysis/Regulatory Flexibility Analysis for the Fastener Quality Act which has been prepared by NIST, including comments on the data, estimates, and assumptions used in preparing this analysis, which may be obtained by contacting NIST at the address shown below; and classes of fasteners which are not used in critical applications but which are otherwise covered by the Act and this regulation, and which might be waived from coverage under these proposed regulations, or conversely, classes of fasteners which are used in critical applications but which are not covered by the Act and this regulation, and which should be covered under these proposed regulations.

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Comments on the proposed regulation and the Regulatory Impact Analysis/Regulatory Flexibility Analysis must be submitted to: Dr. Stanley I. Warshaw, FQA Program Manager, Office of Standards Services, National Institute of Standards and Technology, Administration Building, room A603, Gaithersburg, MD 20899, telephone number (301) 975-4000. Copies of the Regulatory Impact Analysis/Regulatory Flexibility Analysis may be obtained by writing or calling this address.

FOR FURTHER INFORMATION CONTACT: For subparts A, B, G, H, and I: Michael R. Rubin, Deputy Chief Counsel for NIST, (301) 975-2803; for subpart C: Albert Tholen, Chief, National Voluntary Laboratory Accreditation Program, (301) 975-4016; for subparts D, E and F: John L. Donaldson, Chief, Standards Code and Information Program, (301) 975-4029; and for subpart J: Lynn Beresford, Trademark Legal Administrator, (703) 305-9464.

SUPPLEMENTARY INFORMATION:

Background—Summary of the Act and Provisions Implemented or Interpreted by the Proposed Rule

In 1990, Congress enacted the Fastener Quality Act (the Act) to protect public safety, deter introduction of non-conforming fasteners into commerce, improve the tracing of fasteners used in critical applications, and provide customers with greater assurance that fasteners meet stated specifications. The Act requires that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured; provides for accreditation of laboratories engaged in fastener testing; and requires the inspection, testing and certification (in accordance with standardized methods) of fasteners covered by the Act.

Section 4 of the Act authorizes the Secretary to waive the requirements of the Act for specific categories of fasteners when the Secretary determines that they are not being used in critical applications. Section 4 also authorizes the Secretary to add additional categories of fasteners when the Secretary determines that they are being used in critical applications.

Section 5 of the Act prohibits selling (or offering for sale) any fastener unless it is part of a lot which: (1) Conforms to the standards and specifications to which the manufacturer represents it has been manufactured; and (2) has been inspected, tested, and certified as provided by the Act. An exception to this pre-sale requirement is provided for certain small lots. These small lots must be tested as soon as practicable after delivery to the purchaser. Section 5 also provides that fastener inspection and testing be performed by a laboratory accredited in accordance with procedures and conditions specified by the Secretary of Commerce.

Section 6 requires the Secretary of Commerce, acting through the Director of NIST, to issue regulations including: (1) Procedures and conditions for NIST accreditation of fastener testing laboratories; (2) conditions (consistent to the extent practicable with requirements of national or international consensus documents) under which private entities may apply for approval to directly accredit laboratories in accordance with the requirements of the Act; and (3) conditions under which the accreditation of foreign laboratories by their governments or organizations recognized by the NIST Director will be deemed to satisfy the requirements of the Act.

The Act leaves to the discretion of the Director the procedures NIST will use to determine the competency of foreign governments' (or other organizations') laboratory accreditation programs. In some cases, NIST may use memoranda of understanding or other forms of agreement with such bodies to define the requirements for continued NIST listing of accreditation programs.

Section 7 of the Act makes it unlawful for any shipment of domestically produced fasteners to be sold unless accompanied at the time of delivery by a certificate indicating: (1) That they have been manufactured in accordance with applicable standards and have been tested by an accredited laboratory in accordance with the procedures and conditions established by the Secretary of Commerce; and (2) that an original

copy of the laboratory report is on file for inspection. It is also unlawful for any person to sell to any importer or for any importer to purchase shipments of fasteners of foreign origin, unless delivery is accompanied by a manufacturer's certificate and an original laboratory testing report for each lot from which such fasteners were taken. The proposed regulations establish specific informational requirements for certificates, laboratory reports, and standard forms to be used for these purposes.

Section 7 of the Act also provides an option for importers and private label distributors to accept delivery of a lot or portion of a lot of fasteners without an original copy of the laboratory test report if: (1) The manufacturer provides to such importer or distributor a certificate stating that the fasteners comply with the requirements of the applicable standards and specifications; and (2) the importer or private label distributor assumes responsibility in writing for the inspection and testing of such fasteners in accordance with the Act.

Section 7 also requires that any person who significantly alters a fastener so that it no longer conforms to the description in the relevant certificate and offers such fastener for subsequent sale is to be treated as a manufacturer for purposes of the Act. Such person must have the altered fastener inspected and tested in accordance with the requirements of the Act, unless delivery of such fastener to the purchaser is accompanied by a written statement: (1) Noting the original lot number; (2) disclosing the subsequent alteration; and (3) warning that such alteration may affect the dimensional or physical characteristics of the fastener.

Section 7 also governs the commingling of fasteners from different lots in the same container. This section, which does not apply to sales by original equipment manufacturers (OEM) to their authorized dealers for use in assembling or servicing products produced by them, makes it unlawful for any manufacturer or any person who purchases any quantity fasteners for resale (at wholesale) to commingle like fasteners from different lots in the same container. An exception to this prohibition is that a manufacturer or other person may commingle like fasteners of the same type, grade, and dimension from not more than two tested and certified lots in the same container during repackaging and plating operations if that container is conspicuously marked with the lot identification numbers of both lots. NIST does not propose, at this time, to further define labeling or other requirements for commingling.

Section 7 prohibits the resale of fasteners to any person who purchases such fasteners: (1) For sale at wholesale; or (2) for assembling components of a product or structure for sale—unless the container is conspicuously marked with the lot number from which the fasteners were taken. (This requirement does not apply to sales by OEMs to their authorized dealers for use in assembling or servicing products produced by the OEM.) In addition, upon request by any other type of purchaser prior to or at time of sale, the seller must conspicuously mark the container with the lot number.

Section 8 prohibits offering fasteners for sale that are required by an applicable standard or specification to bear a raised or depressed insignia identifying the manufacturer or distributor unless the manufacturer or distributor has complied with the requirements of a program to be established by the Secretary of Commerce for the registration of such insignia to ensure that the fasteners may be traced to their manufacturers or private label distributors. However, the Act does not establish any particular recordation system to effect that purpose. The Patent and Trademark Office (PTO) was charged with establishing such a system. These requirements are proposed as subpart J of this rule.

Section 9(a) of the Act authorizes the Attorney General to bring an action in U.S. district courts for declaratory and injunctive relief against persons who violate the Act or implementing regulations. Section 9(b) requires the Secretary of Commerce to establish "notice and opportunity for hearing" procedures for the assessment of civil penalties not to exceed $25,000 for each violation of the Act or implementing regulations, authorizes penalty recovery actions by the Attorney General, and authorizes the Secretary to issue subpoenas of witnesses or documents. A "substantial evidence" standard of judicial review is provided. Proposed regulations implementing sections 9(a) and 9(b) are contained in subparts G, H and I. Section 9(c) of the Act provides for criminal penalties, which are enforced by the Department of Justice.

Section 10 of the Act provides for 10-year retention of all records of inspection, testing and certifications of fasteners under the Act by laboratories, manufacturers, importers, private label distributors, and persons who make significant alterations to fasteners.

Section 15 makes the Act applicable only to fasteners fabricated 180 days or more after the Secretary issues final regulations required by sections 5, 6, and 8 of the Act, but permits extensions of this time period if the Secretary determines that an insufficient number of laboratories have been accredited to perform the volume of inspection and testing required. Periodic reports to Congress would be required while any such extension is pending.

Overall Scheme Accreditation of Laboratories to Test Fasteners under the Act

The Act is designed to ensure that all fasteners sold in U.S. commerce for critical applications are tested by laboratories that have been determined competent to conduct required fastener testing and that actually test fasteners correctly. As discussed below, fastener testing laboratories may be accredited by NVLAP under the Fastener Laboratory Accreditation Program being established to implement the Act; by an accrediting body operating a NIST-approved accreditation program; or by an accreditation program of a foreign government or other government-like body recognized by the Director.

As noted above, one intention of the Act is that NIST "approve" (under appropriate conditions) other accreditation programs as being qualified to determine the competency of laboratories to test fasteners for purposes of the Act. The Act requires that this be done "using to the extent practicable the requirements of national or international consensus documents." The requirements contained in this proposed rule for such recognition have been based upon two international consensus documents, International Organization for Standardization (ISO) Guides 54 and 55.

The Department's responsibility to ensure compliance is made explicit in section 6(c) of the Act, which provides that the Secretary "shall ensure" that:

(1) Private entities accrediting laboratories under procedures and conditions established under the Act comply with such procedures and conditions, and

(2) Laboratories accredited by such entities or by foreign governments pursuant to the Act comply with the requirements for such accreditation.

Since NIST is responsible for ensuring compliance with the Act by all fastener testing laboratories—whether accredited by NVLAP, programs operated by private entities which have been approved by NIST, or by foreign government bodies or "other bodies

recognized by the Director"—NIST has adopted the concept of "listing." The "Accredited Laboratory List" required under subpart B is to be a listing of all fastener testing laboratories accredited for testing under the Act. Only listed laboratories may test fasteners under the Act.

Section-by-Section Discussion of the Proposed Rule

Subpart A—"General". This Subpart sets out the purpose of the rule, and presents a general description of the rule. It also contains definitions that apply throughout the rule; procedures by which the applicability of the rule may be waived; procedures for the inclusion of new fasteners under the coverage of the rule; describes sampling procedures; and establishes a format and required content for laboratory test reports.

Subpart B—"Laboratory Accreditation." All laboratories that desire to engage in fastener testing covered by the Act and its implementing regulations must be listed by NIST in the "Accredited Laboratory List" established by this subpart. NIST will prepare and maintain the List, which shall be composed of all laboratories currently accredited under subparts C, D, and E of these regulations. Only laboratory test reports prepared by an accredited laboratory currently listed in the Accredited Laboratory List shall be deemed to meet the requirements of the Act. Procedures for removing a fastener testing laboratory from listing and for appeals of listing decisions are also included.

Subpart C—"NIST Fastener Laboratory Accreditation Procedures". In order to make these regulations as easy to use as possible, NIST has prepared this rule so that it is complete as it stands, and the reader does not need to refer to any other regulation. To accomplish this, NIST has restated in subpart C of this rule relevant portions of the NVLAP procedures, which are published at part 7 of title 15 of the Code of Federal Regulations. This step was necessary because section 6 of the Act provided that the "old" NVLAP procedures were to be used to accredit laboratories under the Act. NIST has used its statutory authority to supplement the NVLAP procedures found at part 7 of title 15 of the CFR by establishing this subpart C, which will govern the operation of NVLAP for the purposes of the Fastener Quality Act only.

The original NVLAP rule, found at 15 CFR part 7, consists of four subparts: A—General Information; B—Establishing a LAP; C—Accrediting a Laboratory; and D—Conditions and Criteria for Accreditation. The first two subparts are largely not applicable to the NVLAP Fastener Program because they deal with issues which are already addressed in the Act. For example, the mechanism in Part 7 dealing with the establishment of accreditation programs has no applicability to the NVLAP Fastener Program because that Program was established by the Act. Accordingly, virtually all of subparts A and B of part 7 are omitted from the regulations being published today.

This Subpart sets out the procedures and technical requirements of the NVLAP Fasteners Testing Program for the accreditation of laboratories that test fasteners. Each section of subparts C and D of the original NVLAP procedures is repeated in this new subpart, with minor modifications made as necessary to focus this regulation upon the Fastener Quality Act.

Accreditation is available to any laboratory that demonstrates competence to provide services according to the criteria specified in this subpart. Any laboratory that uses test methods included in this program may apply for NVLAP accreditation. It is up to the laboratory to select the areas and specific tests within each area for its proposed scope of accreditation. A laboratory may be accredited to test and/or measure fasteners in any one or more of the areas of chemical, dimensional, mechanical and physical, non-destructive, or metallography testing.

Subpart D—"NIST Approval of Accreditation Programs." This Subpart governs NIST approval of accreditation programs operated by private entities. All private accreditation entities that seek to accredit fastener testing laboratories must receive recognition under this subpart. Renewal and revocation of such approval are also covered in subpart D.

Subpart E—"Recognition of Accreditation Programs." In accordance with section 6(a)(1)(C) of the Act, this subpart sets forth the conditions under which the accreditation of foreign laboratories by their governments or by organizations recognized by the Director shall be deemed to meet the requirements of section 7 of the Act. The Subpart provides that consistent with applicable laws and regulations, the Director may negotiate and conclude agreements with the governments of other countries implementing section 6(a)(1)(C) of the Act.

Subpart F—"Requirements for the Fastener Laboratory Accreditation Bodies". This subpart sets out requirements that must be met by all accreditation bodies approved by NIST under subpart D. These requirements, which are based on requirements contained in the International Organization for Standardization (ISO) Guide 54, are intended to assure that the approved laboratory accreditation body has the administrative and technical capability to conduct a fastener accreditation program which meets all the requirements of the Act.

Subpart F also sets out the requirements against which an approved accreditation body assesses the technical competence of an applicant testing laboratory. These requirements shall be consistent with the requirements contained in subpart C of the regulations and all technical requirements established under that Subpart. Additional requirements may be prescribed by the accreditation body, provided that they are consistent with International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 25 and do not negate or undermine any requirements imposed under subpart C.

Subpart G—"Enforcement". This Subpart and the following two subparts set forth the procedures governing the Commerce Department's administrative procedures for assessment of civil penalties and remedies where there has been a determination that a violation of the Act has occurred. They will govern civil remedy and penalty proceedings as provided for in section 9 of the Act. Subpart G defines the specific rules for the filing and service of documents in the administrative proceedings covered.

Subpart H—"Civil Penalties". This subpart governs the Commerce Department's administrative procedures for the assessment of civil penalties under the Fastener Quality Act.

Subpart I—"Hearing and Appeal Procedures". This Subpart states the procedures governing the conduct of the hearings and the issuance of final decisions by the judge or Under Secretary in administrative proceedings involving alleged violations of the Fastener Quality Act and of the regulations promulgated relevant to the implementation of the Act.

Subpart J—"Insignia". This Subpart contains the conditions and procedures for manufacturers' insignias to be recorded by the Patent and Trademark Office (PTO). The purpose of Section 8 of the Act is to ensure that fasteners may be traced. The Act effects this purpose by requiring manufacturers and private label distributors, as defined by the Act, to inscribe any fastener, required by the standards and specifications to which it was

manufactured to bear a raised or depressed insignia identifying its manufacturer or private label distributor, with insignias that can be used to trace the fastener to its original manufacturer or private label distributor. However, the Act does not establish any particular recordation system to effect that purpose. The Patent and Trademark Office (PTO) was charged with establishing such a system.

Ultimately, the PTO focused on five possible systems for recording fastener insignias; these alternatives are described in appendix F of the Regulatory Impact Analysis/Regulatory Flexibility Analysis. After considerable discussion of these five alternatives, the PTO determined that the PTO should permit the manufacturer or private label distributor who has a trademark duly registered with the PTO to use that trademark as its fastener insignia. For manufacturers or private label distributors who do not have a trademark registered with the PTO, the PTO would assign an alphanumeric designation to that manufacturer or private label distributor. The assigned alphanumeric designation would be a unique three digit number followed by a letter e.g. 123A. The PTO would not assign any alphanumeric designation which is already used in the industry to indicate quality or compliance with a standard.

Request for Comments

The Director of the National Institute of Standards and Technology requests comments on the draft regulations to appear at 15 CFR part 280 implementing the Fastener Quality Act which are included in this notice.

Public comments are specifically requested on the following matters: (1) The draft regulations to appear at 15 CFR part 280 implementing the Fastener Quality Act which are included in this notice; (2) the Regulatory Impact Analysis/Regulatory Flexibility Analysis for the Fastener Quality Act which has been prepared by NIST, including comments on the data, estimates, and assumptions used in preparing this analysis; and (3) classes of fasteners which are not used in critical applications but which are otherwise covered by the Act and this regulation, and which might be waived from coverage under § 280.4 of these proposed regulations, or conversely, classes of fasteners which are used in critical applications but which are not covered by the Act and this regulation, and which should be covered under § 280.4 of these proposed regulations.

Persons interested in commenting on the proposed regulations should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Central Reference and Records Inspection Facility, room 6020, Hoover Building, Washington, DC 20230.

Classification

Executive Order 12291

The Department has determined that this rule is a major rule within the meaning of section 1 of Executive Order 12291. The Department of Commerce estimates that the annual cost to the United States economy of this regulation might be as low as roughly $20 million, but could exceed $485 million, using a "worst case" estimate. As a result, a Regulatory Impact Analysis has been prepared on the expected costs that will be incurred by both government and industry to implement these regulations, as well as on the expected benefits to be derived from the rule's implementation.

The Fastener Quality Act requires that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured; provides for accreditation of laboratories engaged in fastener testing; and requires the inspection, testing and certification (in accordance with standardized methods) of fasteners covered by the Act. To the extent that the Act permitted some flexibility in the development of the implementing regulations, the Department has sought and incorporated advice from its Fastener Advisory Committee, chartered pursuant to the Act, to maximize the cost effectiveness of the proposed regulations. This proposed rule reflects their advice to the extent that it was consistent with the requirements of the Act.

However, the Advisory Committee also examined a number of regulatory alternatives that it felt would improve the cost effectiveness of the Act and implementing regulations. These regulatory alternatives were not in accord with the Act as now written and would require legislative amendment to incorporate them. Cost estimates based on these regulatory alternatives were requested by the Office of Management and Budget and were included in the analysis, though they are not discussed here. A copy of the analysis is available from NIST at the address listed above.

While there are a number of incidental costs which were not included in the analysis (such as the cost of educating buyers and the general public), costs identified by the Fastener Advisory Committee and others as being the most significant ones likely to be incurred in the implementation of the Fastener Quality Act are discussed in the analysis.

In assessing the annual effect on the economy of implementing this draft regulation, the Department of Commerce has considered only those new costs that are to be created by the regulation.

This is important because many of the requirements contained in the Fastener Quality Act and implemented in the draft regulation reflect current industry practice and will not result in new costs for compliance.

The analysis was based upon the assumption that anywhere from roughly 1 percent up to 25 percent of the fastener industry may eventually be covered by this regulation. The one percent estimate was based upon the findings of the Commerce, Science, and Transportation Committee of the United States Senate, which stated in its report on the Fastener Quality Act that approximately 200 billion bolts, screws and other fasteners are sold in the United States. Of these, approximately one percent are used in critical applications that will be covered by the Act. However, a "worst case" estimate provided by industry of a 25 percent rate of coverage was also used in this analysis as an upper bound in estimating costs. A narrower estimated range used by the Fastener Advisor Committee was also used to estimate costs in the analysis.

Costs will be incurred by government to: (1) Establish a Laboratory Accreditation Program for fastener testing laboratories (Fastener LAP) under the National Voluntary Laboratory Accreditation Program; (2) establish a program to approve other private sector (domestic and foreign) laboratory accreditation programs for fastener laboratories; (3) establish a manufacturers' insignia program; (4) establish a program to recognize programs of government/quasi-government laboratory accreditation programs; (5) develop implementing regulations in compliance with all rulemaking requirements; and (6) to enforce the requirements of the Act and the implementing regulations.

It is anticipated that the first three activities will be self-supporting and that program developmental and operating costs will be recovered through fees charged to users. The costs associated with establishing a recognition program for fastener accreditation programs of other governments, and rulemaking costs are not expected to be recoverable. These

costs could not be estimated based on available data. Such costs are expected to exceed $150,000.

Compliance costs will also be directly incurred by testing laboratories, fastener manufacturers, and distributors. In most cases, these costs will be passed on to fastener users/purchasers; and, in turn, to the users/buyers of products assembled with those fasteners. As noted above, these costs will vary with the percent of industry assumed to be covered under the Act. Industry costs considered in this analysis included: laboratory accreditation.costs; laboratory recordkeeping costs; manufacturer test costs; manufacturer recordkeeping costs; manufacturer insignia costs; manufacturer nonconforming product costs; distributor recordkeeping and warehousing costs; and distributor inventory costs. Total annual industry costs in these areas are expected to fall between $19.5 million and $486.7 million.

Expected annual laboratory accreditation costs are estimated to range from $.3 million to $6.4 million for the accreditation of between 20 and 640 laboratories depending on the percent of fasteners assumed to be covered under the Act. Accreditation cost per laboratory will vary with the scope of accreditation sought (the number of test methods for which the laboratory seeks accreditation); however, the average cost per laboratory is expected to be approximately $10,000.

Manufacturers will be required by the Act to have a sample from each fastener lot (covered by the Act) tested in an accredited laboratory. It should be noted that manufacturers which include a grade mark on their fasteners are already obligated by existing laws to test those fasteners to ensure that they are not improperly labeled or misrepresented. If the 1 to 25 percent range is used, the number of fastener lots requiring testing will be between 115,000 and 2,875,000. The Department of Commerce estimates that between $.2 million to $6.0 million (excluding additional spectrochemical or mill heat test costs) will be expended by fastener manufacturers in the United States to conduct required additional tests on fasteners which are not presently being performed.

In addition, the Department of Commerce's Fastener Advisory Committee identified one major area where additional tests would be required in excess of current industry practice. Industry practice prior to enactment of the Fastener Quality Act was to perform chemical tests on raw materials rather than on finished fasteners. However, these so-called mill-heat tests will not be sufficient to meet the requirements of the Act. The industry will be required to conduct chemical tests on each lot of fasteners. Based upon information supplied by the Fastener Advisory Committee that a single basic alloy spectra-chemical analysis costs roughly $35, the total costs of these new test requirements would range from $4.0 million to $100.6 million assuming a range of 1 to 25 percent industry coverage.

Annual costs incurred by the estimated 5,000 U.S. distributors to comply with the noncommingling and recordkeeping requirements of the Act are estimated at between $15.0 million and $373.7 million. Information provided by the Fastener Advisory Committee also supports the conclusion that the economic impact of the Act will be greatest on distributors. Distributors that sell grade-marked fasteners covered by the Act will incur additional costs to comply with the non-commingling and lot tracing requirements of the Act. However, the economic impact on fastener distributors will vary, depending on whether the distributor already has a computerized inventory system and whether that distributor already has the personnel and warehouse space to keep track of individual lots of fasteners. In addition, some distributors are already providing lot trace and would not require additional staff or space.

Currently, not all nonconforming fasteners are necessarily unusable. It has been industry practice to allow customers to evaluate and, at their discretion, accept a nonconforming fastener based on the requirements of their end use or application. Acceptances are most common in cases of fasteners with only minor nonconformances. Fasteners with significant nonconformances which affect useability are generally reworked, discarded, or scrapped. Under the Act, all sales/acceptances by buyers/users of nonconforming critical fasteners are prohibited. Because the costs associated with being unable to sell fasteners with minor nonconformances vary by manufacturer depending on the effectiveness of the quality system employed during the manufacturing process and the willingness of customers to accept fasteners with nonconformance, these costs could not be estimated, though they must be considered in evaluating the total costs of the rule.

Industry will also incur annual costs to comply with the additional recordkeeping requirements placed on laboratories and manufacturers and to obtain manufacturer insignias in instances where manufacturers and private label distributors lack a registered trademark. These costs could not be estimated based on available data. However, they too must be factored into any evaluations involving the total cost of implementing the proposed rule.

There are also expected benefits to be derived from implementing the proposed rule. Information on such benefits was only available in the form of narrative accounts by individuals and agencies and could not be quantified. However, Congress determined that passage of the Act was required in order to protect the public safety, deter introduction of non-conforming fasteners into commerce, improve tracing of fasteners used in critical applications, and provide customers with greater assurance that fasteners meet stated specifications. Congress expects that the Fastener Quality Act will: (1) Increase the costs of fastener manufacturers and others, currently mismarking and/or misrepresenting grade-marked and/or through-hardened fasteners, who now choose to comply with the law; and/or (2) will increase the probability of locating and imposing penalties on those who continue to mismark and misgrade fasteners covered by the Act. In either case, the incidence of misrepresentation and mismarking of grade-marked and/or through-hardened fasteners covered by the Act is expected to be reduced.

Executive Order 12612

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Small Business

Consistent with the requirements of the Regulatory Flexibility Act, NIST has prepared an initial regulatory flexibility analysis of the proposed regulation. As permitted by section 605 of title 5 of the United States Code captioned "Avoidance of Duplicative or unnecessary analyses", the initial regulatory flexibility analysis has been prepared in conjunction with and as part of the Regulatory Impact Analysis described above.

Paperwork Reduction Act

This proposed rule contains information collection requirements subject to the Paperwork Reduction Act. Under the authority of the Fastener Quality Act (Act) (Pub. L. 101–592), the Department of Commerce (acting through NIST and PTO) is required to establish three new programs, each of

which will impose some paperwork burden on the public. Most of the procedures and requirements for these three programs are contained in the proposed rule, 15 CFR Part 280—Procedures for Implementation of the Fastener Quality Act.

Under the Act, NIST is required to establish a new Fastener Laboratory Accreditation Program (Fastener LAP) under its National Voluntary Laboratory Accreditation Program (NVLAP). The Information Collection System used for the Fastener LAP will be part of the existing National Voluntary Laboratory Accreditation Program (NVLAP) Information Collection System approved for use through 04/30/93 under OMB No. 0693–0003. The forms will be part of the Agency Form Series No. 1144. In addition, the Act requires accredited laboratories retain all records pertinent to the testing and certification of fasteners for a period of ten years. The recordkeeping requirements under the Fastener LAP are consistent with this requirement in the Act.

NIST is also required to establish a program under which private entities may apply to NIST for approval to engage directly in the accreditation of laboratories for the testing of fasteners under the Act. Under this new information collection system, NIST will solicit applications from U.S. and foreign private accreditation entities (bodies). The information collected will enable NIST to evaluate applications to determine if the fastener accreditation program described in the application meets all the requirements of the Act and of the proposed 15 CFR part 280. Only NIST authorized personnel will have access to the information submitted in the application for use in assessment and evaluation. The application procedures and requirements will be as streamlined as possible, while allowing NIST to obtain adequate information to reach a decision on each application. The decision to approve or disapprove any fastener accreditation program cannot be made without this information. No unnecessary information requirements will be imposed.

Information requirements contained in application package are specific to this program and are not duplicated by other government programs. The information obtained through the application process does not exist elsewhere—only applicants can supply the necessary information.

Public reporting burden for this NIST information collection system is estimated to average four hours per response, including the time for reviewing the instructions, searching existing data source, gathering and maintaining the data needed, and completing and reviewing the collection of information. While the total number of applicants is not known, NIST does not expect more than five applicants in the first year. Any informational requirements which are deleted from the proposed rule will also be deleted from the form.

Section 6(c) of the Act provides that: "(T)he Secretary may require any such private entity [accreditation body] to provide all records and materials that may be necessary to allow the Secretary to carry out this subsection [Ensuring Compliance]." Because the Act requires accredited laboratories to retain all records pertinent to the testing and certification of fasteners for a period of ten years, retention of information on the fastener accreditation process and results of that process for each accredited fastener laboratory must also be retained for ten years in order for NIST to fulfill its compliance responsibilities under the Act. Retaining accreditation records for less than ten years would make it difficult, if not impossible, for NIST to determine whether the cause of any violations of the Act uncovered during that ten year period is assignable in whole or in part to deficiencies or errors in the accreditation process and to impose appropriate civil and/or criminal penalties as required under the Act.

Any comments on the paperwork burden imposed under these two programs should be sent to the FQA Program Manager, NIST, Building 101, room A629, Gaithersburg, MD 20899 and to the Office of Management and Budget, Paperwork Reduction Project (OMB Numbers: 0693–0003 and 0693–0015), Washington, DC 20503.

Under section 8 of the Act, the Secretary of Commerce, acting through PTO, is required to establish a third program, the Insignia Program, to ensure the ability to trace fasteners. The Act requires manufacturers and distributors of fasteners to apply an identifying insignia to the head of any fastener or to another surface area if the fastener has no head. This requirement applies to all fasteners covered by the Act which are sold or offered for sale. U.S. and foreign manufacturers and private label distributors who lack a registered trademark may apply to PTO for the assignment of a unique identifying insignia. The process of obtaining an insignia will be on a first come, first served basis and will be the same for all manufacturers and private label distributors (domestic and foreign), regardless of size. The appearance of either a registered trademark or an identifying insignia on a fastener will ensure that it may be traced to its original manufacturer or private label distributor as required by the Act.

The application procedures and requirements for obtaining an insignia are minimal and the public reporting burden for this PTO information collection system is estimated to average five minutes per response. The information requirements for the Insignia Program are specific to the program, and are not duplicated by other government programs.

Approximately 900 applications are expected during the first year. If the application is approved, a certificate of recordal will be issued to the applicant. The certificate of recordal is valid for a period of five years and may be renewed for five consecutive five-year periods from the date of issuance of the original certificate.

Any comments on the paperwork burden imposed under the Insignia Program should be sent to the Office of Management and Organization, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231 and to the Office of Management and Budget, Paperwork Reduction Project (OMB Number: 0651–0028), Washington, DC 20503.

List of Subjects in 15 CFR Part 280

Business and industry, Fastener industry, Imports.

Dated: August 7, 1992.

Samuel Kramer,

Acting Director.

For reasons set forth in the preamble, it is proposed that title 15 of the Code of Federal Regulations be amended by adding part 280 to read as follows:

PART 280—FASTENER QUALITY

Subpart A—General

Sec.

Subpart B—Laboratory Accreditation

Sec.

Authority: Section 13 of the Fastener Quality Act (Pub.L. 101–592).

Subpart A—General

§ 280.1 Purpose/description of rule.

The Fastener Quality Act (the Act) (Pub.L. 101–592) is intended to protect the public safety, to deter the introduction of nonconforming fasteners into commerce, to improve the ability to trace fasteners covered by the Act, and generate greater assurance that fasteners meet stated specifications. The Act: (a) Requires that certain fasteners which are sold in commerce conform to the specifications to which they are represented to be manufactured, (b) provides for accreditation of laboratories engaged in fastener testing; and (c) requires inspection, testing and certification, in accordance with standardized methods, of fasteners covered by the Act.

§ 280.2 Definitions.

Unless the context requires otherwise or unless specifically stated the terms in this part have the meanings prescribed in the statute. In addition the following definitions apply:

Accreditation means laboratory accreditation.

Accreditation criteria means a set of requirements used by an accreditation body which a laboratory must meet to be accredited.

The Act means the Fastener Quality Act (Pub.L. 101–592).

Agency means the National Institute of Standards and Technology within the U.S. Department of Commerce.

Alter means to alter by through hardening; by electroplating of fasteners having a minimum tensile strength of 150,000 pounds per square inch; or by machining.

Applicable statute means the Fastener Quality Act and any regulations promulgated by the U.S. Department of Commerce to implement it.

Certificate of accreditation is a document issued by an accreditation body to a laboratory that has met the criteria and conditions of accreditation. The certificate may be used as proof of accredited status.

Civil Penalty means an assessed penalty of not more than $25,000 for each violation where it has been determined after notice and an opportunity for a hearing, that a person or entity has violated the Act or any regulation promulgated under the Act.

Commissioner means the Commissioner of Patents and Trademarks.

Consensus standards organization means the American Society for Testing and Materials, American National Standards Institute, American Society of Mechanical Engineers, Society of Automotive Engineers, or any other standards setting organization determined by the Secretary to have comparable knowledge, expertise, and concern for the health and safety in the field for which such organization purports to set standards.

Container means any package of fasteners traded in commerce.

Critical application means any use of a fastener which is consistent with the physical, mechanical, and performance requirements as described in applicable standards and specifications to which the fastener was manufactured and for which it is reasonably foreseeable that a failure of a fastener would result in serious personal injury or death, significant property damage, or significant repair costs.

Decision means an initial or final determination by a judge or other designated hearing officer.

Director means the Director of the National Institute of Standards and Technology (NIST).

Ex parte communication means an oral or written communication which is not part of the public record with respect to which reasonable prior notice to all parties is not given, but does not include inquiries regarding procedures, scheduling or case status.

Fastener means any screw, nut, bolt, or stud, washer or other item included within the definition for fastener contained in section 3(5) of the Fastener Quality Act, and shall also include any category of fastener included within the definition by the Director in accordance with the provisions of § 280.5 of this part, but shall not include any category of fastener waived by the Director in accordance with the provisions of section 280.4 of these regulations.

Fastener set means a collection of small quantities of products, including fasteners, of similar configuration with varying sizes, collected together and sold as a package.

Final administrative decision means an order or decision of the agency assessing a civil penalty which is not subject to further agency review.

General Counsel means the General Counsel of the United States Department of Commerce or his or her designee.

Grade identification marking means any symbol appearing on a fastener purporting to indicate that the fastener's base material, strength properties, or performance capabilities conform to a specific standard of a consensus standards organization, government agency or major end user of fasteners.

Importer means a person located within the United States who contracts for the initial purchase of fasteners manufactured outside the United States for resale or such person's use within the United States.

Initial decision means a decision of a judge or other designated hearing officer, which under applicable statute and regulation, which is subject to review by the Under Secretary, but which becomes the final administrative decision in the absence of such review.

Investigation means an undertaking by the Agency to obtain information for implementing, enforcing, or determining compliance with the Fastener Quality Act and regulations promulgated under the Act. The term investigation includes, but is not limited to investigational hearings and inquiries, making use of subpoenas and depositions.

Judge means a judge or other designated hearing officer.

Laboratory accreditation is the formal recognition that a testing laboratory is competent to carry out specific test(s) or specific type(s) of tests.

(Laboratory) accreditation body means a legal or administrative entity that accredits laboratories.

Laboratory assessment means the on-site examination of a testing laboratory to evaluate its compliance with specified criteria.

Laboratory test report means a report prepared by an accredited laboratory in accord with § 280.6 of these regulations.

Lot means a quantity of fasteners of one part number fabricated by the same production process from the same coil or heat number of metal as provided by the metal manufacturer and submitted for inspection and testing at one time.

Major end user means a recognized developer and publisher of standards bearing such user's identification which have characteristics similar to national consensus standards and which have been developed or modified to fit the specific needs of such user. A major end user purchases fasteners and installs them into a structure or a sub-assembly or complete assembly.

Manufacturer means a person who fabricates fasteners, or who alters any item so that it becomes a fastener.

NIST means the National Institute of Standards and Technology, U.S. Department of Commerce.

NVLAP means the National Voluntary Laboratory Accreditation Program operated by the National Institute of Standards and Technology.

OEM means an original equipment manufacturer.

Original equipment manufacturer means a person who uses fasteners in the manufacture or assembly of its products and sells fasteners to authorized dealers as replacement or service parts for its products.

Party means the respondent or the Agency as represented by counsel.

Person means any person, partnership, limited partnership or corporate entity and/or a representative, agent or designee.

Private label distributor means a person who contracts with a manufacturer for the fabrication of fasteners bearing the distributor's insignia.

Product includes any type or category of manufactured goods, constructions, installations, or natural or processed materials.

Proficiency testing means the determination of laboratory testing performance by means of comparing and evaluating tests on the same or similar items or materials by two or more laboratories in accordance with predetermined conditions.

Scope of accreditation is a document issued by an accreditation body to an accredited laboratory which lists the test methods or test services for which the laboratory is accredited.

Secretary means the Secretary of Commerce.

Significantly alter means to alter or take any other action which could

weaken or otherwise materially affect the performance or capabilities of the fastener as it was originally manufactured and tested. The term does not include the application of adhesives or sealants, locking elements, cutting off, provisions for lock wires, or coatings and platings of parts with a specified minimum tensile strength of less than 150,000 pounds per square inch. The fasteners so treated do not require retesting of initial properties, but may require tests as specified by the applicable specification requirements, such as prevailing torque or salt spray, and do not require remarking with the alterers recorded insignia.

Standards and specifications means the provisions of a document published by a consensus standards organization, a government agency, or a major end-user of fasteners which defines or describes dimensional characteristics, limits of size, acceptable materials, processing, functional behavior, plating, baking, inspecting, testing, packaging, and required markings of any fastener.

Testing laboratory is a laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of products.

Through-harden means heating above the transformation temperature followed by quenching and tempering.

Traceability. The accuracy of a measuring instrument is said to be "traceable" or "fully traceable" if there exists a documented chain of comparisons connecting the accuracy of the instrument to other measuring instruments of higher accuracy and, ultimately, to a primary standard.

Under Secretary means the Under Secretary for Technology, Technology Administration, United States Department of Commerce.

§ 280.3 Relationship to State laws.

Nothing in the Act or these regulations shall be construed to preempt any rights or causes of action that any buyer may have with respect to any seller of fasteners under the law of any State, except to the extent that the provisions of the Act or these regulations are in conflict with such State law.

§ 280.4 Waiver requirement.

(a) If the Director determines that any category of fastener is not used in critical applications, the Director shall waive the requirements of the Act and these regulations with respect to such category.

(b) Before making a waiver under paragraph (a) of this section, the Director shall provide advance notice and the opportunity for public comment.

§ 280.5 Inclusion of new fasteners.

(a) If the Director determines that any category of fastener not presently covered by this regulation is used in critical applications, the Director may include such category within the definition of fasteners under this regulation.

(b) Before making a determination under paragraph (a) of this section, the Director shall provide advance notice and the opportunity for public comment.

§ 280.6 Laboratory test reports.

(a) When performing tests for which they are accredited under this part, each laboratory accredited under subparts C, D, or E of this part and currently listed in the Accredited Laboratory List shall issue test reports of its work which accurately, clearly, and unambiguously present the test conditions, test set-up, test results, and all required information. All reports must be in English or be translated into English, must be signed by an approved signatory, must be on tamper-proof paper, and contain the following information:

(1) Name and address of the laboratory;

(2) Unique identification of the test report including date of issue and serial number, or other appropriate means;

(3) Name and address of client;

(4) Name and title of approved signatory accepting technical responsibility for the tests and test report;

(5) Fastener Description, including:

(i) Product family (screw, nut, bolt, washer, or stud), drive and/or head configurations as applicable;

(ii) Head markings (describe or draw manufacturer and grade identification symbols);

(iii) Diameter; length of bolt, screw or stud; thickness of load bearing washer or nut; thread form and class of fit;

(iv) Product specification related to the laboratory in writing by the manufacturer, importer or distributor;

(v) Lot identification number and other numbers as appropriate;

(vi) Sample size tested;

(vii) Manufacturer (name and address);

(viii) Specification and grade of material;

(ix) Heat treated to the requirements of the following specification;

(x) Coating material, thickness, process applied, baking, if any, and corrosion resistence testing, if applicable;

(6) Standard or reference for sampling scheme;

(7) Production lot size and the number sampled and tested;

(8) Name and affiliation of person performing the lot sampling;

(9) Actual tests required by specification;

(10) Test results for each sample;

(11) Date of last accreditation audit;

(12) All deviations from the test method;

(13) Signature of approved signatory;

(14) All other items required by the test method;

(15) A statement that the samples tested either conform or do not conform to the fastener specifications or standards;

(16) A statement that the report must not be reproduced except in full;

(17) A statement to the effect that the test report relates only to the item(s) tested; and

(18) The name of the body which accredited the laboratory for the specific tests performed which are the subject of the report, and the current period of accreditation.

(b) The laboratory shall issue corrections or additions to a test report only by a further document suitably marked, e.g. "Supplement to test report serial number * * *". This document must specify which test result is in question, the content of the result, the explanation of the result, and the reason for acceptance of the result.

§ 280.7 Recordkeeping requirements.

(a) Each laboratory accredited under subparts C, D, or E of this part shall retain for 10 years after the performance of a test all records pertaining to that test concerning the inspection and testing, and certification, of fasteners under the Act and these regulations. The final test report or the test folder maintained by the laboratory must contain sufficient information for the exact test conditions to be reproduced at a later time if a retest is necessary.

(b) Manufacturers, importers, private label distributors, and persons who significantly alter fasteners shall retain for 10 years after the performance of a test all records pertaining to that test concerning the inspection and testing, and certification, of fasteners under the Act and these regulations, and shall provide copies of any applicable laboratory testing report or manufacturer's certification upon request to any subsequent purchaser of fasteners taken from the lot to which such testing report or manufacturer's certificate relates.

§ 280.8 Ownership of laboratories by manufacturers.

(a) If the Director finds that, as to a specific type of fastener, and as to a

specific type of inspection or testing, a ban on manufacturer ownership or affiliation with a laboratory performing tests under the Act and these regulations would increase the protection of health and safety of the public or industrial workers, the Director may impose such a ban.

(b) Before imposing a ban under paragraph (a) of this section, the Director shall provide advance notice and the opportunity for public comment.

§ 280.9 Subcontracting of testing.

(a) Whenever a laboratory accredited under subparts C, D, or E of this part issues a test report under the Act and this part, it is implied that the report reflects work performed, and results obtained, by the personnel, equipment, and procedures of that laboratory. However, in some cases a laboratory may require the use of another facility due to equipment failure, need for specialized equipment, work overload, or to perform tests outside the laboratory's own scope of accreditation.

(b) Whenever a laboratory accredited under subparts C, D, or E of this part subcontracts to another laboratory the performance of any test or portion of a test it must:

(1) Place the work with another laboratory accredited under either subpart C, D, or E of this part;

(2) Clearly identify in its records, and in the report to the client, specifically which test method(s) or portions of a test method(s) were performed by the accredited laboratory and which were performed by the subcontractor; and,

(3) Inform the client, before the fact, that subcontracting will be necessary.

§ 280.10 Sampling.

In the event that the standard or specification to which a manufacturer represents the fasteners in a particular sample to have been manufactured does not provide for the size, selection or integrity of the sample to be inspected and tested, inspections and tests under section 5 of the Act shall be carried out using ASME/ANSI B18.18.2M, Inspection and Quality Assurance For High-Volume Machine Assembly Fasteners.

§ 280.11 Surplus fasteners.

Fasteners offered or held out as "surplus" must meet the requirements of the Act. That is:

(a) Such fasteners must have been inspected and tested and found to be in compliance with the Act;

(b) Lot integrity must be preserved; and,

(c) Sales must be accompanied by a written statement noting the original lot number, the identity of the seller and the fastener manufacturer, and a certified copy of the manufacturer's certificate of compliance with the Act.

Subpart B—Laboratory Accreditation

§ 280.100 Introduction.

The Fastener Quality Act sets out three alternatives by which a laboratory may become accredited for testing under the Act. This part 280 sets out implementing procedures for each of those alternatives: (a) Subpart C contains procedures by which the National Institute of Standards and Technology National Voluntary Laboratory Accreditation Program will accredit laboratories for the testing of fasteners under the Act; (b) Subpart D sets out procedures under which private entities may apply to NIST for approval to engage directly in the accreditation of laboratories for the testing of fasteners under the Act; and (c) Subpart E sets out conditions under which the accreditation of foreign laboratories by their governments or organizations recognized by the Director shall be deemed to satisfy the laboratory accreditation requirements for the testing of fasteners under the Act.

§ 280.101 Accredited Laboratory List.

NIST shall prepare and maintain an Accredited Laboratory List of laboratories accredited under subparts C, D, and E of this part. Only laboratory test reports describing tests performed by an accredited laboratory listed in the Accredited Laboratory List at the time the report was issued, and which are within the scope of fastener testing for which the laboratory has been accredited, shall be deemed to meet the requirements of the Act.

§ 280.102 Procedures for inclusion in the Accredited Laboratory List.

(a) NVLAP, and all entities approved by NIST under subpart D or recognized by NIST under subpart E shall promptly notify NIST of each accreditation action taken under subparts C, D, or E, respectively. Accreditation actions include initial accreditation, denials of accreditation, renewals, suspensions, terminations, revocations and changes in scope. Notifications shall be filed with: The FQA Program Manager, Office of Standards Services, Administration Building Room A603, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

(b) Each notification to NIST shall include the following information, in English: The name of the laboratory accreditation body which has conducted the accreditation and taken the accreditation action; the name and address of the laboratory affected by the accreditation action; the nature of the accreditation action; a copy of the laboratory's accreditation certificate which states the fastener test methods for which it has been accredited; the name and telephone number of the authorized representative(s) and approved signatory(s) of the fastener testing laboratory; information concerning the physical locations of all organizational units involved in fastener testing, and the specific scope of fastener testing for each organizational unit for which accreditation has been granted.

(c) NIST shall revise the list of accredited laboratories promptly when it is notified of a new accreditation action taken under subparts C, D, or E, including initial accreditation, denials of accreditation, renewals, suspensions, terminations, revocations and changes in scope, and shall take appropriate steps to make the information on the list available to the public.

§ 280.103 Compliance with requirements of accreditation.

(a) NIST may remove from the Accredited Laboratory List any fastener testing laboratory accredited under subpart C, D or E if NIST deems such action to be in the public interest. Laboratory test reports describing tests performed by a laboratory after it has been removed from the Accredited Laboratory List under this section shall not be deemed to meet the requirements of the Act.

(b) A laboratory which has been removed from the Accredited Laboratory List may appeal the removal to the Director by submitting a statement of reasons of why the laboratory should not be removed from the list. NIST may, at its discretion, hold in abeyance the removal action pending a final decision by the Director. Within sixty days following receipt of the appeal, the Director shall inform the laboratory in writing of his or her decision.

Subpart C—NIST Fastener Laboratory Accreditation Procedures

§ 280.200 Introduction.

This subpart sets out the procedures and technical requirements of the NVLAP Fasteners Testing Program ("the Program") for the accreditation of laboratories that test fasteners. Laboratories which are granted accreditation under this program for certain tests will be eligible to provide testing services and test reports required by the Fastener Quality Act for those

tests. Accreditation is available to any laboratory that demonstrates competence to provide services according to the criteria specified in this subpart. Any laboratory (including: commercial; manufacturers'; university; and laboratories located in foreign countries) that uses test methods included in this program may apply for NVLAP accreditation. It is up to the laboratory to select the areas and specific tests within each area for its proposed scope of accreditation. A laboratory may be accredited to test and/or measure fasteners in any one or more of the areas of chemical, dimensional, nondestructive, mechanical and physical, or metallography testing. Laboratories located in foreign countries must meet certain additional requirements including: Additional fees for travel outside the U.S. and provision of a language translator.

§ 280.201 Applicability of Part 7, Title 15, Code of Federal Regulations.

As permitted by section 6 of the Act, and for the purposes of that Act only, the provisions of part 7, title 15 of the Code of Federal Regulations are superseded by the procedures and requirements set forth in this subpart. The provisions of part 7, title 15 of the Code of Federal Regulations remain in effect except as they pertain to laboratory accreditation actions required by the Act.

§ 208.202 Establishment of the Program.

(a) NVLAP shall develop the technical requirements for the Program based on expert advice. This advice may be obtained through one or more informal public workshops or other suitable means.

(b) NVLAP shall make every reasonable effort to ensure that the affected testing community within the scope of the Program is informed of any planned workshop. Summary minutes of each workshop will be prepared. A copy of the minutes will be made available for inspection and copying at the NIST Records Inspection Facility.

(c) As a means of assuring effective and meaningful cooperation, input, and participation by those federal agencies that may have an interest in and may be affected by the Program, NVLAP shall communicate and consult with appropriate officials within those agencies.

(d) When NVLAP has completed the development of the technical requirements of the Program and established a schedule of fees for accreditation, NVLAP shall publish a notice in the **Federal Register** announcing the establishment of the Program.

(e) The notice will:

(1) Identify the scope of the Program; and

(2) Advise how to apply for accreditation.

(f) NVLAP shall establish fees in amounts that will enable the Program to be self-sufficient. NVLAP shall revise the fees when necessary to maintain self-sufficiency.

§ 280.203 NVLAP Program Handbook.

NVLAP may prepare a NVLAP Program Handbook for the Fastener Testing Program for use by applicant and accredited laboratories. The purpose of the Handbook is to provide specific technical details for fastener testing as they apply to on-site assessment, proficiency testing, test equipment and facilities, and scope of accreditation. The Handbook also provides procedural details as they apply to the conduct of the NVLAP program on matters such as fees, application procedures and forms, and requirements which have to be disclosed for the purposes of assessment of competence or in determining compliance with criteria. The Handbook provides a method of supplementing the criteria and conditions of this subpart.

§ 280.204 Applying for accreditation.

(a) Any laboratory may request an application for accreditation in the Program in accordance with instructions provided in notices announcing its formal establishment.

(b) Upon receipt of a laboratory's application, NVLAP shall:

(1) Acknowledge receipt of the application;

(2) Request further information, if necessary;

(3) Confirm payment of fees before proceeding with the accreditation process; and

(4) Specify the next step(s) in the accreditation process.

§ 280.205 Assessing and evaluating a laboratory.

(a) Information used to evaluate a laboratory's compliance with the conditions for accreditation set out in § 280.207, the criteria for accreditation set out in § 280.208, and the technical requirements established will include:

(1) On-site assessment reports;

(2) Laboratory responses to identified deficiencies; and

(3) Laboratory performance on proficiency tests.

(b) NVLAP shall arrange the assessment and evaluation of applicant laboratories by contract or other means in such a way as to minimize potential conflicts of interest.

(c) NVLAP shall inform each applicant laboratory of any action(s) that the laboratory must take to complete the requirements for assessment and evaluation.

§ 280.206 Granting and renewing accreditation.

(a) NVLAP, after reviewing an evaluation report, shall grant or renew, suspend, or propose to deny or revoke accreditation of an applicant laboratory, no later than 30 days following the date of submittal of the report. If accreditation action is not taken within this time limit, NVLAP shall notify the laboratory stating the reasons for the delay.

(b) Accreditation is granted for one year. Initial accreditation is granted when a laboratory has met all of the NVLAP requirements. One of four anniversary dates for renewal is assigned, January 1, April 1, July 1, or October 1. Once a laboratory has been assigned an accreditation date, that date is retained as long as the laboratory remains in the program. Accreditation will both expire and be renewed on that date.

(c) If accreditation is granted or renewed, NVLAP shall:

(1) Provide a certificate of accreditation to the laboratory;

(2) Identify the scope and terms of the laboratory's accreditation;

(3) Provide guidance on referencing the laboratory's accredited status, and the use of the NVLAP logo by the laboratory and its clients, as needed; and

(4) Remind the laboratory that accreditation does not relieve it from complying with applicable federal, state, and local laws and regulations.

(d) NVLAP shall notify an accredited laboratory at least 30 days before its accreditation expires advising of the action(s) the laboratory must take to renew its accreditation. Each participating laboratory will be sent a Renewal Application Package. Fees for renewal will be charged according to services required. The application and fees must be received by NIST prior to expiration of the laboratory's current accreditation to avoid a lapse in accreditation.

(e) If an accredited laboratory fails to complete the assessment and evaluation process for renewal before its accreditation expires, NVLAP shall notify the laboratory stating that its accreditation has expired and reiterating the action(s) the laboratory must take to renew its accreditation.

§ 280.207 Conditions for accreditation.

To become accredited and maintain accreditation by NVLAP, a laboratory shall:

(a) Agree in writing to:

(1) Be assessed and evaluated initially and on a periodic basis not to exceed once each year;

(2) Demonstrate, on request by NVLAP, that it is able to perform the tests representative of those for which it is seeking accreditation;

(3) Pay all relevant fees;

(4) Participate in proficiency testing as required;

(5) Be capable of performing the tests for which it is accredited according to the latest version of the test method within one year after its publication or within another time limit specified by NVLAP;

(6) Limit the representation of the scope of its accreditation to only those tests or services for which accreditation is granted;

(7) Limit all its test work or services for clients to those areas where competence and capacity are available;

(8) Limit references to its accredited status to letterheads, brochures, test reports, and professional, technical, trade, or other laboratory services publications, and use the NVLAP logo to the conditions set out in § 280.213 of this part;

(9) Inform its clients that the laboratory's accreditation or any of its test reports in no way constitutes or implies product certification, approval, or endorsement by NIST;

(10) Maintain records of all actions taken in response to testing complaints for 10 years, as required by § 280.7 of this part;

(11) Maintain an independent decisional relationship between itself and its clients, affiliates, or other organizations so that the laboratory's capacity to render test reports objectively and without bias is not adversely affected;

(12) Maintain a list of staff members designated to fulfill NVLAP requirements for authorized representative, approved signatory(s), technical manager (or similar title), person responsible for maintaining the Quality Manual;

(13) Maintain confidentiality of proprietary and client information;

(14) Maintain a laboratory Quality System;

(15) Report to NVLAP within 30 days any major changes involving the location, ownership, management structure, authorized representative, approved signatories, or facilities of the laboratory; and

(16) Return to NVLAP the Certificate of Accreditation or the Scope of Accreditation for possible revision or other action should it:

(i) Be requested to do so by NVLAP;

(ii) Voluntarily terminate its accredited status;

(iii) Become unable to conform to any of the conditions of this Subpart or related technical requirements; or

(iv) Voluntarily change its scope of accreditation by addition or deletion.

(b) Provide, in English, upon request by NVLAP, the following information:

(1) Legal name and full address;

(2) Ownership of the laboratory;

(3) Organization chart showing the position of the laboratory in the organization and relationships of the laboratory with other parts of the organization that are relevant to performing testing covered in the accreditation request;

(4) General description of the laboratory, including its facilities and scope of operation;

(5) Name and telephone number of the authorized representative of the laboratory;

(6) Names or titles and qualifications of laboratory staff nominated to serve as approved signatories of test reports that reference NVLAP accreditation; and

(7) Other information as NVLAP may require.

§ 280.208 Criteria for accreditation.

To become accredited and maintain accreditation by NVLAP a laboratory shall successfully meet all performance requirements and criteria as demonstrated during on-site assessments and proficiency testing, and satisfactorily resolve all deficiencies. A laboratory which is currently accredited must inform NVLAP in writing within 30 days of notification that all deficiencies have been resolved. If the deficiencies are not resolved to the satisfaction of NVLAP, the laboratory faces possible revocation, suspension, or expiration without renewal of its accreditation.

(a) *Quality system.* (1) The laboratory shall operate under an internal quality assurance program appropriate to the type, range, and volume of work performed. The quality assurance program must be designed to ensure the required degree of accuracy and precision of the laboratory's work and should include key elements of document control, sample control, data validation, and corrective action. The quality assurance program must be documented in a quality manual or equivalent which is available for use by laboratory staff. A staff member(s) must be identified as having responsibility for maintaining the quality manual.

(2) The quality manual must include as appropriate:

(i) Policies and procedures for complying with § 280.207, Conditions for accreditation.

(ii) Policies and procedures directly related to compliance with the Fastener Act;

(iii) Quality assurance responsibilities for each function of the laboratory;

(iv) Specific quality assurance practices and procedures for each test, type of test, or other specifically delineated function performed;

(v) Specific procedures for retesting, control charts, reference materials, and inter-laboratory tests;

(vi) The laboratory's quality assurance policies including procedures for corrective action for detected test discrepancies;

(vii) Procedures for dealing with testing complaints; and

(viii) Policies and procedures concerning staff training and competency review programs.

(3) The laboratory shall review its quality assurance system annually by or on behalf of management to ensure its continued effectiveness. These reviews must be documented with details of any corrective action taken.

(b) *Staff.* (1) The laboratory shall:

(i) Be staffed by individuals having the necessary education, training, technical knowledge, and experience for their assigned functions; and

(ii) Have a job description for each professional, scientific, supervisory and technical position, including the necessary education, training, technical knowledge, and experience.

(2) The laboratory shall maintain required staff documentation either with the staff member's personnel records or in some other appropriate, official information folder.

(3) The laboratory shall document the test procedures each staff member has been assigned to perform.

(4) The laboratory shall have a training program for ensuring that new or untrained staff members are able to perform tests properly and uniformly to the requisite degree of precision and accuracy.

(5) The laboratory shall have a program for ensuring that staff members have adequate qualifications and training to perform new duties as assigned.

(6) The laboratory shall be organized:

(i) So that staff members are not subjected to undue pressure or inducement that might influence their judgment or results of their work; and

(ii) In such a way that staff members are aware of both the extent and the limitation of their area of responsibility.

(7) The laboratory shall have a technical manager (or similar title) who has overall responsibility for the technical operations of the laboratory.

(8) The laboratory shall have one or more signatories approved by NVLAP to sign test reports that reference NVLAP accreditation. Approved signatories shall:

(i) Be competent to make a critical evaluation of test results; and

(ii) Occupy positions within the laboratory's organization which makes them responsible for the adequacy of test results.

(9) The laboratory shall evaluate the competence of each staff member for each test method the staff member is authorized to conduct. An evaluation and an observation of performance shall be conducted annually by the immediate supervisor or a designee appointed by the laboratory director. A record of the annual evaluation of each staff member must be dated and signed by the supervisor and the employee.

(c) *Facilities and equipment.* (1) The laboratory shall be furnished with all items of equipment and facilities for the correct performance of the tests and measurements for which accreditation is granted and shall have adequate space, lighting, and environmental control, and monitoring to ensure compliance with prescribed testing conditions.

(2) All equipment must be properly maintained to ensure protection from corrosion and other causes of deterioration. Instructions for a proper maintenance procedure for those items of equipment which require periodic maintenance must be available. Any item of equipment or component thereof which has been subjected to overloading or mishandling, gives suspect results, or has been shown by calibration or otherwise to be defective, must be taken out of service and clearly labelled until it has been repaired. When placed back in service, this equipment must be shown by test or calibration to be performing its function satisfactorily.

(3) Records of each major item of equipment must be maintained. Each record must include:

(i) The name of the item of equipment;

(ii) The manufacturer's name and type, identification and serial number;

(iii) Date received and date placed in service;

(iv) Current location, where appropriate;

(v) Details of maintenance; and

(vi) Date of last calibration, next calibration due date, and calibration report references.

(4) Equipment and facilities may be leased or rented for the purposes of testing within the laboratory scope of accreditation. These items are subject to all of the requirements placed on laboratory-owned equipment including: calibration, documentation, and maintenance.

(5) The laboratory shall maintain procedures for assuring that automated test systems function properly and are used properly.

(d) *Calibration.* The laboratory shall:

(1) Have procedures and policies in its Quality Manual that address all aspects of calibration;

(2) Have a Calibration Manual which must contain or refer to documentation which details the laboratory's procedures for maintaining proper and current calibration of all equipment which may require calibration in order to perform fasteners and metals testing;

(3) Recalibrate, at regular intervals, in-service testing equipment with the calibration status readily available to the operator;

(4) Perform checks of in-service testing equipment between the regular calibration intervals, where relevant;

(5) Maintain adequate records of all calibrations and recalibrations;

(6) Provide traceability of all calibrations and characterizations to reference standards that are traceable to national standards maintained by NIST or by an equivalent foreign national standards authority where these standards exist. Where traceability of measurements to primary (national or international) standards is not applicable, the laboratory shall provide satisfactory evidence of the accuracy or reliability of test results (e.g., by participation in a suitable program of interlaboratory comparison);

(7) Document the reference standards used and the environmental conditions at the time of calibration for all calibrations;

(8) Provide satisfactory evidence of the accuracy or reliability of test results when traceability of measurements to primary (national or international) standards is not applicable;

(9) Apply all applicable calibration requirements to new test equipment before putting it into service, equipment that has been repaired or modified, and to equipment that has been leased or rented.

(e) *Test Methods and Procedures.* The laboratory shall:

(1) Conform in all respects with the test methods and procedures required by the specifications against which the test item is to be tested, except that whenever a departure becomes necessary for technical reasons the departure must be acceptable to the client and recorded in the test report;

(2) Have data to prove that any departures from standard methods and/or procedures due to apparatus design or for other reasons do not detract from the expected or required precision of the measurement;

(3) Maintain a test plan for implementing testing standards and procedures including adequate instructions on the use and operation of all relevant equipment, on the handling and preparation of test items (where applicable), and on standard testing techniques where the absence of such instructions could compromise the test. All instructions, testing standards, specifications, manuals, and reference data relevant to the work of the laboratory must be kept up-to-date and made readily available to the staff;

(4) Maintain measures for the detection and resolution of in-process testing discrepancies for manual and automatic test equipment and electronic data processing equipment, where applicable;

(5) Maintain a system for identifying samples or items to be tested, which remains in force from the date of receipt of the item to the date of its disposal, either through documents or through marking to ensure that there is no confusion regarding the identity of the samples or test items and the results of the measurements made; and

(6) Maintain rules for the receipt, retention, and disposal of test items, including procedures for storage and handling precautions to prevent damage to test items which could invalidate the test results. Any relevant instructions provided with the tested item must be observed.

(f) *Records.* The laboratory shall:

(1) Maintain a record system which contains sufficient information to permit verification of any issued report;

(2) Retain all original observations, calculations and derived data as required in § 280.7;

(3) Maintain records, which may be reviewed during on-site visits on quality system; staff training records and competency reviews; and problems with test system and documentation of resolution; and

(4) Hold records secure and in confidence, as required.

(g) *Test reports.* (1) The laboratory shall issue test reports of its work which accurately, clearly, and unambiguously present the specified test results and all required information. The required contents of test reports which satisfy the Act are listed in § 280.6.

(2) The laboratory shall issue corrections or additions to a test report only by a further document suitably marked, e.g. "Supplement to test report serial number * * *".

(3) Supplemental information collected by the laboratory which is not included in the test report but which is relevant to the results shall be retained by the laboratory in an appropriate manner.

§ 280.209 Denying, suspending, and revoking accreditation.

(a) If NVLAP proposes to deny or revoke accreditation of a laboratory, NVLAP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.

(b) The laboratory will have 30 days from the date of receipt of the proposed denial or revocation letter to appeal the decision to the Director of NIST. If the laboratory appeals the decision to the Director of NIST, the proposed denial or revocation will be stayed pending the outcome of the appeal. The proposed denial or revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within that 30-day period.

(c) If NVLAP finds that an accredited laboratory has violated the terms of its accreditation or the provisions of these procedures, NVLAP may, after consultation with the laboratory, suspend the laboratory's accreditation, or advise of his/her intent to revoke its accreditation. If accreditation is suspended, NVLAP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated. Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test reports during the suspension period. The determination of NVLAP whether to suspend or to propose revocation of a laboratory's accreditation will depend on the nature of the violation(s) of the terms of its accreditation.

(d) A laboratory whose accreditation has been denied, revoked, terminated, or expired, or which has withdrawn its application before being accredited, may reapply and be accredited if the laboratory:

(1) Completes the assessment and evaluation process; and

(2) Meets the conditions and criteria for accreditation that are set out in §§ 280.207 and 280.208.

§ 280.210 Voluntary termination of accreditation.

A laboratory may at any time terminate its participation and responsibilities as an accredited laboratory by advising NVLAP in writing of its desire to do so. NVLAP shall terminate the laboratory's accreditation and shall notify the laboratory stating that its accreditation has been terminated in response to its request.

§ 280.211 Authorized representative.

The laboratory shall designate an Authorized Representative to sign the NVLAP application form and commit the laboratory to fulfill the NVLAP requirements. Only the Authorized Representative can authorize a change in the scope or nature of the laboratory's application. This person will receive all correspondence and inquiries from NVLAP. The Authorized Representative may also be an Approved Signatory. The laboratory must provide to NVLAP the name and address of the Authorized Representative and must, within 30 days, notify NVLAP of a change of Authorized Representative.

§ 280.212 Approved signatory.

(a) The laboratory shall designate one or more staff members as Approved Signatories. Approved Signatories shall be persons with appropriate responsibility, authority and technical capability within the organization. The laboratory must maintain a list of Approved Signatories and make that list available for review during on-site assessments. The laboratory must provide to NVLAP the name(s) and address(es) of the Approved Signatory(s) and must, within 30 days, notify NVLAP of a change of Approved Signatory(s).

(b) The original signature of at least one Approved Signatory must appear on each test report that is written in compliance with the Act and endorsed with the NVLAP logo. The approved signatory is responsible for the technical content of the report and is the person to be contacted by NVLAP, laboratory clients, or others in case of questions or problems with the report.

§ 280.213 Referencing accredited status and use of the NVLAP logo.

(a) The term NVLAP and the NVLAP logo are Federally registered trademarks of the National Institute of Standards and Technology and the Federal Government, who retain exclusive rights therein. Permission to use the term and/or the logo is granted to NVLAP accredited laboratories for the limited purposes of announcing their accredited status, and for use on test reports that describe only testing within the scope of accreditation. NIST reserves the right to control the quality of the use of the term NVLAP and of the logo itself.

(b) The permission granted in paragraph (a) of this section is limited to announcements which accurately represent the scope of the tests or services for which NVLAP has granted accreditation.

(c) Laboratories may refer to their accredited status in professional, technical, trade, or other laboratory services publications. However, such reference must not imply product endorsement or certification by NVLAP, NIST, or the U.S. Government based solely on accreditation by NVLAP. Laboratories shall not reference their accredited status in product advertising or on product labels, containers and packaging. Advertising must not encourage a consumer to purchase a product because it was tested by an accredited laboratory.

§ 280.214 Compliance with existing laws.

Accreditation does not relieve the laboratory of the need to comply with any other Federal, State, or local statutes, ordinances, or regulations that may be applicable to its operations.

Subpart D—NIST Approval of Private Accreditation Programs

§ 280.300 Introduction.

In accordance with section 6(a)(1)(B) of the Act, this subpart sets forth the procedures and conditions under which private entities may apply for approval by NIST to engage directly in the accreditation of laboratories for the testing of fasteners under the Act.

§ 280.301 Application.

(a) Any accreditation body which considers its fastener accreditation program to meet the conditions listed in this subpart and in subpart F of this part may apply to NIST for approval to accredit laboratories for testing under the Act. Applications should be sent to the FQA Program Manager, Office of Standards Services, Administration Building Room A603, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

(b) Upon request, NIST will provide application forms and instructions. The applicant shall complete the application in English and provide whatever enclosures, attachments or exhibits the applicant deems appropriate.

(c) Each application shall include:

(1) The name and address of the accreditation body;

(2) The specific scope of fastener testing accreditation for which approval is sought, for each organizational unit concerned;

(3) Information concerning the function and physical location for each organizational unit which shall be involved in fastener laboratory accreditation;

(4) Names, titles, education, training, technical knowledge, and experience of persons listed as being responsible for the validity of laboratory accreditation actions;

(5) The name and telephone number of the authorized representative(s) of the accreditation body;

(6) Quality Manual of the accreditation body, e.g., complete description of the internal organization and quality system used to control the quality of laboratory accreditation services;

(7) A description of the accreditation body, including its primary functions; corporate entity name; ownership; relationship of the body to any larger corporate entity; address; legal status; management personnel; organizational chart defining relationships that are relevant to laboratory accreditation; and technical resources, including its facilities, equipment, and scope of operation;

(8) A thorough description of the process that the accreditation body uses to accredit fastener testing laboratories;

(9) A description of how the accreditation body selects laboratory assessors, what is the source of assessors, and a description of the assessor training program;

(10) A description of how the accreditation body makes a decision on an accreditation action;

(11) A description of how the accreditation body avoids conflicts of interest by its staff, its assessors, any committees or contractors utilized;

(12) Information showing the financial stability of the applicant, including resources, liability coverage, etc.;

(13) A statement in which the authorized representative declares awareness of the manner in which the NIST approval program functions;

(14) A statement that the accreditation body agrees to receive and cooperate with the NIST evaluation team;

(15) A statement that the accreditation body agrees to comply with all requirements for approval and shall assume all responsibilities associated with that approval;

(16) A statement that the applicant agrees to inform fastener testing laboratories accredited by the applicant of their responsibilities under the Act;

(17) A certification accompanied by documentary evidence demonstrating that the accreditation body is completely independent of any fastener testing laboratory that it accredits, as well as a statement that the accreditation body agrees to maintain such independence, in order to assure the complete impartiality and objectivity of all accreditation actions taken by the accreditation body; and

(18) Such additional information as NIST may from time to time require.

(d) The applicant shall reimburse NIST for all costs incurred in the evaluation of its fastener accreditation program and subsequent costs incurred in ensuring the continued compliance of its program. Reimbursement will be in accordance with the fee schedule established by NIST for this purpose.

(e) An application may be revised by an applicant at any time prior to the final decision by NIST. An application may be withdrawn by an applicant, without prejudice, at any time prior to the final decision by the Director.

§ 280.302 Review and decision process.

(a) Applications submitted by eligible laboratory accreditation bodies will be accepted by NIST and their receipt acknowledged in writing. The applications will be reviewed by NIST against the criteria specified in this subpart and in subpart F. NIST may request additional information as needed from the applicant.

(b) NIST shall conduct on-site assessments of the facilities of the applicant and of all of the applicant's organizational units covered by the application. The on-site assessment shall include the applicant's technical and administrative facilities, and all sites where accreditation assessments are carried out.

(c) If the applicant's program is deemed by NIST to have met the requirements for approval, the applicant shall be notified by NIST in writing, as evidenced by a letter of approval from the Director or his designate which shall include the dates when the approval begins and ends. In no event will the approval be for a period longer than one year. NIST will periodically publish a list of approved fastener accreditation programs in the **Federal Register.**

(d) If the applicant's program does not meet the requirements for approval, the applicant shall be notified in writing, listing the specific requirements from this subpart and subpart F which the applicant's program has not met. After receipt of a notification of disapproval, and within the response period provided, the applicant may:

(1) Submit a revised application for further review, which could result in a positive finding. Reviewing the new submission may involve additional on-site visits by NIST personnel. Additional fees may be in order. Or,

(2) Submit a request that the original application be reconsidered, including a statement of reasons of why the application should have been approved.

§ 280.303 Criteria for approval.

An applicant for NIST approval must demonstrate its ability to operate an accreditation program consistent with the requirements set in this subpart and in subpart F of this part.

§ 280.304 Maintaining approved status.

(a) Approved fastener accreditation programs shall continue to satisfy all the requirements of approval during the approval period.

(b) Upon request by NIST, approved fastener accreditation programs shall make available to NIST in English all records and materials pertaining to the program.

(c) NIST may elect to have a representative participate as an observer during on-site visits to testing laboratories seeking laboratory accreditation by an approved accreditation body.

(d) Neither the accreditation body, nor any laboratory it accredits under the Act and these regulations shall take any action which states or implies fastener certification, approval, or endorsement by NIST or any other agency of the U.S. government. In addition, neither the accreditation body, nor any laboratory it accredits under the Act and these regulations shall take any action which states or implies that the accreditation body or its accredited laboratories are recognized by NIST in any testing or other area(s) beyond those for which NIST has approved the accreditation body. Approved fastener accreditation programs shall not engage in misrepresentation of the scope or conditions of its approval by NIST.

(e) The accreditation body shall maintain a completely independent relationship between itself and any fastener testing laboratory that it accredits, in order to assure the complete impartiality and objectivity of all accreditation actions taken by the accreditation body. Specifically, the accreditation body's ownership, functional and administrative management, Board of Directors, and finances shall be completely independent of any laboratory that it accredits.

§ 280.305 Renewal of NIST approval.

(a) An accreditation body operating an approved fastener accreditation program may seek to renew its approval by filing a renewal request at the address cited above. To assure continuity, the renewal request must be filed at least four months before the current approval expires.

(b) The renewal request will be treated as a new application and will be reviewed in accord with § 280.302 of this part.

(c) When an accreditation body operating an approved fastener accreditation program has filed a timely and sufficient renewal request, the program's current approval will remain in effect until a final decision has been made by NIST on the request.

(d) The laboratory accreditation body shall reimburse NIST for all costs incurred in the renewal of its approval and subsequent costs incurred in ensuring the continued compliance of its fastener accreditation program as required by the Act.

§ 280.306 Voluntary termination of approval.

At any time, an accreditation body may voluntarily terminate its program's approval by giving written notice to NIST and to all laboratories accredited by that body under its fastener laboratory accreditation program. The written notice shall state the date on which the termination will take effect.

§ 280.307 Revocation of approval by NIST.

(a) NIST may revoke its approval of an accreditation body if NIST deems such an action to be in the public interest.

(b) Before revoking the approval of an accreditation body, NIST will notify the accreditation body in writing, giving it the opportunity to rebut or correct, within a reasonable period, the alleged deficiencies which would form the basis of the proposed revocation. If the deficiencies are not corrected or reconciled within 30 days, or such longer time as NIST in its sole discretion may grant, the revocation will become effective.

(c) The accreditation body may appeal the revocation to the Director by submitting a statement of reasons of why the approval should not be revoked. NIST may, at its discretion, hold in abeyance the revocation action pending a final decision by the Director. Within sixty days following receipt of the appeal, the Director shall inform the accreditation body in writing of his or her decision.

(d) Fastener testing laboratories which have been listed by NIST in accordance with subpart B of this part based on their accreditation by an laboratory accreditation body whose approval has been revoked shall be removed from the list, unless an exception is granted by NIST.

Subpart E—Recognition of Accreditation Programs

§ 280.400 Introduction.

In accordance with section 6(a)(1)(C) of the Act, this subpart sets forth the conditions under which the accreditation of foreign laboratories by their governments or by organizations recognized by the Director shall be deemed to meet the requirements of section 7 of the Act.

§ 280.401 International recognition agreements.

Consistent with applicable laws and regulations, the Director may negotiate and conclude agreements with the governments of other countries implementing section 6(a)(1)(C) of the Act. At a minimum, any agreement concluded under this section must provide that accredited foreign laboratories meet conditions for accreditation comparable to and consistent with those set out in § 280.207 of this part, and criteria for accreditation comparable to those set out at § 280.208 of this part.

Subpart F—Requirements for Fastener Laboratory Accreditation Bodies

§ 280.500 Introduction.

This subpart sets out organizational, operational and other requirements that must be met by all accreditation bodies approved by NIST under subpart D. This subpart also sets out the requirements against which an approved accreditation body assesses the technical competence of an applicant testing laboratory. These requirements include conditions with respect to subpart C of this part.

§ 280.501 Summary of accreditation process.

(a) Approved accreditation bodies shall administer a program that includes:

(1) The gathering of information necessary for the evaluation of the applicant laboratory, including any data necessary for ensuring that the fastener testing laboratory meets all general requirements imposed under subpart C of this part and the specific technical requirement imposed under that subpart;

(2) The appointment of one or more qualified assessors designated to assess the applicant laboratory;

(3) The on-site assessment of the applicant laboratory, the preparation of an on-site assessment report, and the documentation of laboratory responses to identified deficiencies;

(4) The review of all evaluation material collected, including relevant information from proficiency testing;

(5) The decision to grant or deny accreditation to the applicant laboratory, with or without conditions, and the definition of the scope of that accreditation;

(6) The provision by the accreditation body to the accredited fastener testing laboratory of a certificate of accreditation which includes the scope of the accreditation granted; and

(7) The notification to NIST required by subpart B of this part.

(b) An approved accreditation body shall require the following information from any applicant to it for accreditation under the Act as a fastener testing laboratory for use in the preparation of on-site assessments:

(1) The general features of the applicant laboratory (corporate entity name, address, legal status, management personnel and technical resources), prior to the on-site assessment;

(2) General information concerning the laboratory covered by the application, such as primary function, relationship in a larger corporate entity and physical location of laboratories involved;

(3) For every technical entity concerned, the list of the tests for which accreditation is sought;

(4) Names, titles, education, training, technical knowledge, and experience of persons listed as being responsible for the technical validity of test reports;

(5) A description of the laboratory's training program for ensuring that new or untrained staff are able to perform tests properly and uniformly to the requisite degree of precision and accuracy;

(6) Description of the internal organization and quality system used by the applicant laboratory to give confidence in the quality of its testing services (quality manual, main quality plans, traceability of measurements to national standards, list of relevant measuring equipment, etc.) which demonstrates that it complies with the requirements defined in § 280.208(a);

(7) The results of internal audits and reviews undertaken by the laboratory;

(8) Examples of the test reports that the applicant laboratory plans to issue, if it is accredited. Test reports shall include as a minimum all information required under § 280.6;

(9) Details of any complaints received by the laboratory and actions taken; and

(10) Any other information and agreements required by § 280.207 of this part.

(c) The approved accreditation body shall conduct on-site assessments of applicant fastener testing laboratories. The applicant fastener testing laboratory, including all the technical entities covered by the application, shall be subjected to an initial assessment at the laboratory premises, or other site(s) where testing is carried out, by qualified assessors and, where appropriate, other representatives of the accreditation body. Applicants shall be informed of the date of assessment and of the name(s) of the qualified assessor(s) nominated to carry out the assessment, with sufficient notice so that they may have an opportunity to object to the appointment of any particular assessor. The mandate given to the assessor(s) shall be clearly defined and made known to the applicant laboratory, which should be required to advise the accreditation body of any prior association with the assessor(s).

(d) The assessment team shall receive from the approved accreditation body a comprehensive report comprised of all relevant information concerning the ability of the applicant laboratory to comply with the accreditation requirements, including any which may come about from the results of proficiency testing. This report shall include the information listed in § 280.501(b).

(e) A detailed report on the outcome of the assessment shall be prepared by the assessment team. This report shall include the information listed in § 280.521. A copy of this report shall be provided to the applicant laboratory. The applicant laboratory shall be invited to present its comments on this report and to comment on the corrective actions taken (or planned to be taken within a definite time) to remedy any non-compliances with the accreditation requirements identified during the assessment.

(f) All information gathered concerning an applicant shall be reviewed and evaluated by the approved accreditation body. The advice of technical committees or other experts may be sought to assist with this review. The aim of this review is to determine whether or not the information gathered indicates that the applicant laboratory complies with all the accreditation requirements.

(g) The decision by an approved accreditation body as to whether or not to accredit a fastener testing laboratory shall be based on the assessment documentation collected and reviewed in accordance with § 280.501(g). Accreditation shall be granted only if the fastener testing laboratory meets conditions for accreditation consistent with and no less stringent than those set out in § 280.207 of this part, criteria for accreditation consistent with and no less stringent than those set out in § 280.208 of this part, and complies with all other requirements of the program.

(h) An accreditation shall be valid for a period not to exceed one year. The continuation of accreditation shall be subject to surveillance as defined in § 280.523.

(i) Approved accreditation bodies shall specify the arrangements by which application for accreditation is to be made, the conditions for the granting, maintenance and renewal of accreditation and the conditions under which accreditation may be denied, suspended or withdrawn.

(j) Approved accreditation bodies shall have arrangements to maintain, suspend or withdraw accreditation, change the scope of accreditation or require reassessment, and to immediately notify NIST of such action as required by subpart B of this part, in the event of:

(1) Changes which affect the fastener testing laboratory's activity and operation, such as changes in personnel or equipment; or

(2) If analysis of a complaint or any other information indicates that the testing laboratory no longer complies with the requirements of the accreditation body.

(k) Approved accreditation bodies shall have arrangements relating to the status of accreditation when any information provided on the application (e.g. ownership) of the accredited laboratory changes.

§ 280.502 General requirements for approval.

To be considered for approval by NIST, an applicant accreditation body:

(a) Shall have the administrative and technical capability to conduct a fastener testing laboratory accreditation program which meets all the requirements of the Act and these regulations.

(b) Shall be able to document that the administration of its accreditation program is free of any financial or structural conflicts-of-interests in granting an accreditation.

(c) Shall agree not to deny accreditation solely on the basis of a fastener testing laboratory's affiliation or non-affiliation with manufacturing, distributing, or vending organizations, or because a laboratory is a foreign firm.

§ 280.503 Organization of approved accreditation bodies.

(a) An approved laboratory accreditation body must:

(1) Be an identifiable private legal entity;

(2) Have legal rights and responsibilities relevant to its accreditation activities;

(3) Operate a program which has developed sufficient experience in all aspects of testing laboratory accreditation;

(4) Have a permanent staff under a senior executive who is responsible to the organization, body or board to which he reports;

(5) Ensure that the senior executive, staff, and technical committees are free from any commercial, financial and other pressures which might influence the results of the accreditation process, and that they have no financial or employment interest with any laboratory that the body accredits or considers accrediting.

(6) Ensure that its senior executive has sufficient experience in the development and operation of a testing laboratory accreditation program;

(7) Have an organizational structure, including a quality system, that enables it to clearly demonstrate its ability to operate a fastener testing laboratory accreditation program satisfactorily;

(8) Not offer any consulting or other services or advice which might compromise any accreditation actions taken; and

(9) Not make access to any fastener accreditation program it operates be conditional upon membership in any association or group, nor shall there be undue financial conditions, such as excessive fees, to restrict participation. The procedures under which the fastener accreditation program operates shall be administered in a non-discriminatory manner.

(b) The grant of approval to an accredited body by NIST under these regulations shall not confer such approval on any entity other than that approved by NIST. Specifically, mutual recognition agreements between an approved laboratory accreditation body and other laboratory accreditation bodies shall have no effect under these regulations.

§ 280.504 Policy and decision making processes.

(a) Approved laboratory accreditation bodies shall have policy and decision making processes based on information from all parties adequate for:

(1) Adjudicating all matters relating to its operation;

(2) Reviewing the implementation of its policies;

(3) Reviewing its finances;

(4) Creating committees, as required, to which defined activities may be delegated;

(5) Granting, maintaining, suspending and withdrawing accreditation; and

(6) Providing for opportunity for comment by affected bodies.

(b) Approved accreditation bodies shall have in effect policy and decision making processes that prevent any confusion between laboratory accreditation and the certification of products, the registration of quality systems or the accreditation of certification/quality system registration bodies.

§ 280.505 Technical committees.

(a) Approved accreditation bodies shall have one or more technical committees or the equivalent, each responsible, within its scope, for advising the body on the technical requirements for fastener accreditation and on technical matters related to the operation of an accreditation program for fastener testing.

(b) When the technical committees are involved in the formal decision making process, they shall have formal rules and structure.

§ 280.506 Quality system.

(a) Approved accreditation bodies shall operate a quality system appropriate to the type, range and volume of work performed. This system shall be documented and be available for use by the accreditation body staff. The laboratory accreditation body shall designate a person having direct access to its highest executive level, to take responsibility for the quality system and the maintenance of the quality documentation.

(b) The quality documentation shall contain information regarding:

(1) A quality policy statement;

(2) The organizational structure of the laboratory accreditation body;

(3) The operational and functional duties and services pertaining to quality, so that each person concerned will know the extent and the limits of their responsibility;

(4) General quality system procedures;

(5) Quality system procedures specific to each step of the accreditation process;

(6) Arrangements for feedback and corrective actions whenever discrepancies are detected; and

(7) A procedure for dealing with appeals, complaints and disputes.

(c) The quality system shall be systematically and periodically reviewed by or on behalf of management to ensure the continued effectiveness of the arrangements, and corrective action initiated. Such reviews shall be recorded together with details of any corrective action taken.

§ 280.507 Accreditation documents.

(a) An approved accreditation body shall transmit to each fastener testing laboratory it accredits a formal accreditation document such as a letter or a certificate signed by an officer who has been assigned such responsibility. These formal accreditation documents shall state that accreditation is granted in compliance with the requirements of the Fastener Quality Act and shall clearly identify:

(1) The technical entities accredited by name and address;

(2) The scope of the accreditation including a comprehensive list of test methods and/or other descriptors that specify the tests or types of tests for which accreditation is granted;

(3) The persons recognized by the laboratory accreditation body as being responsible for the test reports; and

(4) The date from which the accreditation is effective, and the term of the accreditation, not to exceed one year.

(b) The approved accreditation body shall have arrangements for controlling the ownership, use and display of the accreditation documents and/or controlling the manner in which the accredited fastener testing laboratory may refer to its accredited status.

(c) The approved accreditation body shall have available all records and materials as may be required to conduct the program to ensure compliance with the Act.

§ 280.508 Appeals procedure.

An approved accreditation body shall have non-discriminatory arrangements for the consideration of appeals against its decisions.

§ 280.509 Contractual arrangements.

(a) The approved accreditation body shall require a duly authorized representative of any fastener testing laboratory it accredits to sign a contract or other document acknowledging the rights and duties of the accredited laboratory and the accreditation body, and committing the laboratory to comply with these duties.

(b) The approved accreditation body shall require its assessors to sign a contract or other document by which they commit themselves to comply with the rules defined by the accreditation body, including those relating to confidentiality and those relating to independence from commercial and other interests, including any prior association with laboratories to be assessed.

§ 280.510 Financial resources.

(a) The approved accreditation body shall have the financial stability and resources required for the operation of an accreditation program.

(b) The approved accreditation body shall provide to NIST a description of the means by which it receives its financial support.

§ 280.511 Staff.

The approved accreditation body shall have an adequate number of competent permanent staff under a senior executive responsible for carrying out the day-to-day operations; be organized so as not to subject staff members to undue pressure or inducement that might influence their judgement or the results of their work; and have adequate arrangements for the recruitment and employment of impartial experts appointed to provide technical advice and to carry out assessments.

§ 280.512 Equipment and facilities.

The approved accreditation body shall have equipment and premises appropriate to its activities.

§ 280.513 Confidentiality.

Consistent with applicable laws, the approved accreditation body shall have adequate arrangements to ensure, at all levels of its organization, including technical committees, confidentiality of the information obtained relating to the application, assessment and accreditation of testing laboratories.

§ 280.514 Publications.

(a) Approved accreditation bodies shall have procedures in place which permit the prompt notification to interested parties of any change in the management, organizational structure, or requirements of its laboratory accreditation program.

(b) The laboratory accreditation body shall publish at least annually, update at adequate intervals, and make available to NIST and other interested parties:

(1) Information about the authority under which fastener laboratory accreditation program operated by the laboratory accreditation body was established;

(2) The requirements for fastener testing laboratory accreditation, especially and changes in them;

(3) A document stating the arrangement for obtaining and maintaining fastener accreditation;

(4) The fees charged to applicant and accredited fastener testing laboratories;

(5) A description of the rights and duties of accredited fastener testing laboratories, including requirements, restrictions or limitations on the use of the laboratory accreditation body's logo and on the ways of referring to the accreditation granted;

(6) A directory of accredited fastener testing laboratories that identifies the scope of the accreditation granted; and

(7) All technical criteria, booklets, technical notes, nontechnical criteria or requirements, all policy statements or guidance notes for laboratory assessors in the area of fastener testing.

(c) Approved accreditation bodies shall document and make available to interested parties their general requirements and specific technical requirements.

§ 280.515 Records.

(a) Approved laboratory accreditation bodies shall maintain records to demonstrate that accreditation criteria and procedures for fastener testing have been effectively fulfilled; particularly application forms, assessment reports, and reports relating to granting, maintaining, suspending or withdrawing accreditation. Accreditation documents shall form part of the record.

(b) The records shall be retained for a period of at least 10 years, and shall be available to NIST personnel and other persons considered by the accreditation body to have a right of access to these records.

(c) The accreditation body shall possess and maintain up-to-date records on assessors consisting of name and address; position in employer's organization; educational qualifications and professional status; work experience; training in quality assurance, assessment and calibration; experience in testing laboratory assessment, together with field of competence; and date of most recent updating of record.

§ 280.516 Delegation.

If an approved laboratory accreditation body decides to delegate fully or partially the assessment of a fastener testing laboratory to another competent body or individual, then:

(a) The laboratory accreditation body must inform NIST in writing prior to taking such action.

(b) The laboratory accreditation body shall take full responsibility for such an assessment made on its behalf, and

(c) Granting, maintaining, suspending or withdrawing the accreditation shall not be by the body or individual to whom assessment has been delegated.

(d) The laboratory accreditation body shall ensure that the party to which assessment has been delegated is recognized by NIST as an accreditation body for fasteners.

§ 280.517 Liability.

Approved laboratory accreditation bodies shall have adequate liability insurance to cover liabilities arising from their operations and/or activities.

§ 280.518 Exchange of experience.

(a) Approved accreditation bodies shall encourage an exchange of experience among the testing laboratories accredited by it.

(b) Approved accreditation bodies shall be prepared to exchange information with NVLAP and other accreditation bodies to create confidence in and harmonize the interpretation of standards.

§ 280.519 Assessors.

(a) Approved accreditation bodies shall ensure that assessors appointed to assess a testing laboratory for accreditation to test fasteners shall:

(1) Be familiar with the relevant legal regulations, accreditation procedures and accreditation requirements;

(2) Be familiar with the general requirements of subpart C of this part and all technical requirements established under that subpart;

(3) Have a thorough knowledge of the relevant assessment method and assessment documents;

(4) Be technically knowledgeable about the specific tests or types of tests for which accreditation is sought and, where relevant, with the associated sampling procedures;

(5) Be able to communicate effectively, both in writing and orally; and

(6) Be free of any commercial, financial or other pressures that might cause assessor(s) to act in other than an impartial or nondiscriminatory manner.

(b) Approved accreditation bodies shall have an adequate procedure for qualifying assessors, comparable to that used in subpart C, comprised of an examination of the competence and training of the assessors and attendance at one or more actual assessments of a fastener testing laboratory with an already qualified assessor.

(c) Approved accreditation bodies shall have procedures to:

(1) Ensure that a qualified assessor agrees to be appointed to assess a particular laboratory within a required time;

(2) Appoint a lead assessor, if relevant; and

(3) Guard against conflicts-of-interest.

(d) Approved accreditation bodies shall ensure that assessors are at all times provided with:

(1) An up-to-date set of accreditation procedures which provide all necessary assessment instructions, other appropriate documents (such as worksheets and checklists), and all relevant information on accreditation arrangements; and

(2) All other necessary information.

§ 280.520 Assessment.

(a) A description of the assessment method used to ensure the compliance of the applicant laboratory with the accreditation requirements shall be documented, updated, and placed at the applicant laboratories' and assessors' disposal by the approved accreditation body.

(b) Approved accreditation bodies shall provide adequate time and financial support for the conduct of the assessment.

(c) The approved accreditation body shall ensure that a comprehensive and correct assessment has been conducted.

§ 280.521 Assessment report.

The comprehensive assessment report shall follow a model established by the approved accreditation body. It shall include the following as a minimum:

(a) The names of the assessors;

(b) The names and addresses of the technical entities assessed;

(c) The scope of the accreditation sought;

(d) Information on the technical qualifications, experience and authority of the staff encountered and especially the persons responsible for the technical validity of test record;

(e) Comments on the physical facilities (i.e., the environment and test equipment) and on the laboratory, including maintenance and calibration in relationship to the volume of work undertaken;

(f) Comments on the adequacy of the internal organization and procedures adopted by the applicant laboratory to give confidence in the quality of its testing services;

(g) Information on any proficiency testing performed by the applicant laboratory, the results of this proficiency testing, and the use of these results by the laboratory;

(h) Comments of the assessment team on the compliance of the applicant laboratory with the accreditation requirements;

(i) Comments on the presentation of test reports; and

(j) Comments on the actions taken to correct any noncompliance identified at previous assessments.

§ 280.522 Proficiency testing.

(a) The approved accreditation body shall require each fastener testing laboratory it accredits, and each laboratory which has applied to it for accreditation to participate in proficiency testing comparable to that conducted under subpart C by NVLAP.

(b) Although an accreditation shall not be granted or maintained only on the basis of the results of proficiency testing, accreditation shall not be granted or maintained if required proficiency testing participation is unsatisfactory.

§ 280.523 Surveillance of accredited laboratories.

The approved accreditation body shall make provisions to ensure that each accredited laboratory continues to comply with all accreditation requirements. Such surveillance shall be conducted at regular intervals and shall be consistent with the requirements imposed on fastener laboratories under subpart C of this part.

§ 280.524 Accredited laboratory test report.

An approved accreditation body shall allow an accredited fastener testing laboratory to refer to its accreditation only in test reports that relate to tests or types of tests for which accreditation is held. Test reports must contain the information specified in § 280.6 of this part.

§ 280.525 User information.

(a) Approved accreditation bodies shall prepare and publish at least once a year a directory of accredited fastener testing laboratories and the scope of each laboratory's accreditation.

(b) Approved accreditation bodies shall periodically prepare supplements to the directory of accredited fastener testing laboratories covering new accreditation actions taken, including initial accreditation, renewals, suspensions, terminations, and revocations.

(c) Each approved accreditation body shall have procedures in place which permit the prompt notification to interested parties of any change in the accreditation status of laboratories accredited under the Act by that body, and shall, on the request of any person, verify the current accreditation status of any laboratory which that body has accredited.

§ 280.526 Complaints procedure.

Approved accreditation bodies shall have a documented policy and procedure for the resolution of complaints received from laboratories about the handling of accreditation matters, or from users of testing services regarding accredited fastener testing laboratories.

Subpart G—Enforcement

§ 280.600 Purpose and scope.

This subpart sets forth the procedures governing the Commerce Department's administrative procedures for assessment of civil penalties and remedies where there has been a determination that a violation of the Act has occurred.

§ 280.601 Initiation of inquiries and investigations.

Inquiries and/or investigations as described in § 280.603 will be initiated by the Agency in any manner authorized by law.

§ 280.602 Prohibited acts.

The following acts are prohibited under the Act and this part:

(a) The manufacture for sale, the sale or offering for sale, in commerce or the importation, into the United States or the introduction delivery for introduction, transportation or causing to be transported in commerce for the purpose of sale or delivery any fastener or fastener set without appropriate testing and certification and an original laboratory report on file with the manufacturer as required by section 5(a) of the Act.

(b) The manufacture for sale, the sale or the offering for sale, in commerce or the importation into the United States or the introduction or causing to be transported in commerce for the purpose of sale or delivery any fastener or fastener set without conformity to standards, testing and certification as delineated under section 5(a) of the Act.

(c) The manufacture for sale, the sale or the offering for sale, in commerce, or the importation into the United States or the introduction, delivery for introduction, transportation or causing to be transported in commerce for the purpose of sale or delivery any fasteners in lots of 50 or less during the 10-day statutory waiver of testing under section 5(a)(2)(A) of the Act, without written notice to the purchaser (except at retail unless notice is requested) that the fastener has not yet been tested.

(d) Failure to test, using the applicable sampling procedures prescribed by the Secretary as required by section 5(b)(2)(B) of the Act.

(e) Falsification of a laboratory report of testing required by section 5(b) of the Act.

(f) Failure to comply with the procedures and conditions of laboratory accreditation, or approval or recognition of accrediting bodies pursuant to sections 6(a) and 6(b) of the Act or these regulations, or falsification of any document relating to laboratory accreditation, or approval or recognition of accrediting bodies, as required by sections 6(a) or 6(b) of the Act, or this part.

(g) The manufacture for sale, the sale, or the offering for sale, in commerce, or importation into the United States or the introduction, delivery for introduction, transportation or causing to be transported in commerce for the purpose of sale or delivery of a fastener or fastener set without a written certificate by the manufacture which accompanies the fastener at the time of delivery stating that the fastener has been tested as required by section 7(a) of the Act.

(h) Failure to provide the Secretary with all records and material necessary to ensure compliance with the laboratory accreditation program as required by sections 6(a) and 6(b) of the Act, and this part.

(i) The sale or the offering for sale, in commerce, or the introduction, delivery for introduction, transportation or causing to be transported in commerce for the purpose of sale or delivery, imported fasteners or fastener sets manufactured outside the United States without the manufacturer's certificate and the original laboratory testing report with respect to each lot from which the fasteners are taken (except that imports from nations with which the United States has a free trade agreement(s) need not have an original laboratory report for any lots) as required by section 7(b) of the Act.

(j) Failure to re-test and certify a fastener that has been significantly altered subsequent to manufacture as required by section 7(d) of the Act, unless delivery of such fastener to the purchaser is accompanied by a written statement noting the original lot number, disclosing the subsequent alteration, and warning that such alteration may affect the dimensional or physical characteristics of the fastener.

(k) Commingling by a manufacturer, or by any person who purchases any quantity of fasteners for resale at wholesale, of fasteners from different lots in the same container, as prohibited by section 7(e)(1) of the Act; except commingling during repackaging and plating operations of not more than two lots of fasteners which have been tested and certified under the Act, and which

are of the same type, grade, and dimensions, as permitted by section 7(e)(1), and except for sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturer, as permitted by section 7(e)(2).

(l) Failure to conspicuously identify separate lots of fasteners as required by section 7(f) of the Act.

(m) The manufacture for sale, the sale, or the offering for sale, in commerce, or importation into the United States or the introduction, delivery for introduction, transportation or causing to be transported in commerce for the purpose of sale or delivery of a fastener which fails to bear the manufacturer's recorded insignia as required by section 8(b) of the Act, or by this part.

(n) Failure of a party or witness to respond to a subpoena, attend and provide testimony at a hearing and provide relevant papers, books, and documents, as required by section 9(b)(6) of the Act, or by this part.

(o) Failure of a laboratory which performs inspections to maintain records for 10 years, as required by section 10(a) of the Act, or by this part.

(p) Failure of a manufacturer, importer, private label distributor or any person who significantly alters a fastener to maintain for 10 years all records concerning the inspection and testing, and certification, of fasteners under section 5 of the Act as required by section 10(b) of the Act, or by this part.

§ 280.603 Conduct and scope of investigations.

(a) After an investigation or inquiry is initiated, as set forth in § 280.601 an officer or employee duly designated by the Agency shall issue the notice of investigation ("notice"). Upon presenting the notice, along with appropriate credentials, to the person or agent in charge of the firm to be investigated, the Agency officer or employee is authorized for the purposes set forth herein:

(1) To demand the production of, have access to and to copy all relevant records, books, documents, papers, packaging or labeling which:

(i) Are required by the Agency to be established, made or maintained; or

(ii) Show or relate to the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any fastener or fasteners that are otherwise relevant to determining whether any person or firm has acted or is acting in compliance with the Act and regulations, rules and orders promulgated under the Act.

(2) To obtain: (i) Information, both oral and written, concerning the production, inventory, testing, distribution, sale, transportation, importation, marking or receipt of any fastener and the organization, business, conduct, practices, and management of any person or firm being inspected and its relation to any other person or firm; (ii) Samples of items at retailer's cost unless voluntarily provided; and (iii) Information, both oral and written, concerning any matter referred to in the Act and this part.

(b) A separate notice shall be given for each investigation. Each investigation shall be commenced at and completed within a reasonable period of time.

(c) The notice of investigation shall include the name and address of the person or firm being investigated; the name and title of the Agency officer or employee; the date and time of the anticipated entry; pertinent extracts from the statutory provisions upon which the right to production of information is based; pertinent extracts from the section of this part setting forth the authority of the Agency, officers or employees and the types of information and items they are authorized to obtain; a statement that the investigation will be conducted and the information will be provided with the cooperation of the person or firm being investigated; a statement which sets forth the purposes of the investigation and the nature of the information and items to be obtained and/or copied.

(d) If upon being presented with a notice by an officer or employee duly designated by the Agency as the person or agent-in-charge, the person being investigated refuses to produce documents which have been requested, the Agency may then take other appropriate legal action, including issuing a subpoena under the provisions of § 280.605.

§ 280.604 Compulsory processes and service.

(a) In addition to or in lieu of authorizing the issuance of a notice, the Agency may elect to use any other reasonable means authorized by law to initiate investigations to obtain information for the purposes set forth in § 280.603, including but not limited to the following compulsory processes: Subpoenas and Depositions.

(b) Service in connection with any of the compulsory processes shall be effected:

(1) By personal service upon the person or agent in charge of the firm being investigated, inspected or inquired of; or

(2) By certified mail or delivery to the last known residence or business address of anyone being investigated, inspected or inquired of.

(c) The date of service of any form of compulsory process shall be the date on which the document is received by mail, delivered in person or published in the **Federal Register**. In computing a period of time in which a party is required or permitted to act, the day from which the time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(d) The requirements of this part shall be referred to in any notice of compulsory process served upon a person or firm.

(e) Any one submitting information in response to any of the compulsory processes referred to in § 280.604 should state whether any of the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the Agency to be confidential in accordance with Departmental regulations or whether any of the information is believed to be exempt from disclosure by the Agency under the provisions of the Freedom of Information Act (5 U.S.C. 552). Any claim of confidentiality must be in writing, and any request for exemption from disclosure must be made in accordance with the Freedom of Information Act.

§ 280.605 Subpoenas.

(a) The Agency may issue to any person or firm a subpoena requiring the production of documentary evidence (subpoena duces tecum) and/or attendance and testimony of witnesses (subpoena ad testificandum) relating to any matter under investigation. Procedures regarding compliance with subpoenas and motions to limit or quash subpoenas are provided for in § 280.815.

(b) In case of contempt or refusal to obey a subpoena served upon any person pursuant to this section, the Agency may make application to any district court of the United States in which the person is found, resides, or transacts business to issue an order requiring such person to appear and give testimony before the Agency or to appear and produce documents before the Agency.

§ 280.606 Depositions.

(a) The Agency by subpoena may require testimony to be taken by deposition at any stage of any

investigation. Depositions may be taken before any person who is designated by the Agency and has the power to administer oaths. The person before whom the deposition is taken shall put the deponent under oath. The testimony given shall be reduced to writing by the person taking the deposition or under that person's direction and shall then be submitted to the deponent for signature unless the deponent waives the right to sign the deposition. All depositions shall be closed to the public, unless otherwise ordered by the Agency. The release of the record of such depositions shall be governed by the Freedom of Information Act (5 U.S.C. 552), and other applicable laws or regulations, except that the deponent may, in accordance with § 280.816, obtain a copy of his or her deposition.

(b) Any changes which the deponent desires to make shall be entered on the face of the deposition and shall state the reasons for such changes. The deposition shall then be signed by the deponent, unless the deponent waives the right to sign, cannot be found, or is unable or refuses to sign. The deponent must sign the deposition within 30 days of its submission to him or her, or within such shorter time period as the Agency may designate. Whenever a deponent is required to sign in less than ten days, the Agency shall notify the deponent of the reasons for such shorter time period.

(c) If the deponent does not sign the deposition within the prescribed time period, the Agency designee shall sign it and state on the record, the fact of the waiver and the right to sign or of the illness or absence of the deponent, or the deponent's inability or refusal to sign, together with the reason if any is given. The deposition may be used in any administrative proceeding, as provided by this part or any other proceeding, as allowed by applicable rules.

§ 280.607 Filing and service of documents.

(a) Whenever this part requires the service of a document or other paper, such service may be effectively made on the agent for service of process or on the attorney for the person to be served or other designated representative. Refusal by the person to be served, or his agent or her agent, or attorney or designated representative for service, of a document or other paper, will be considered effective service of the document or other paper as of the date of such refusal. Service will be considered effective when the document is mailed to an addressee's last known, proper address.

(b) Any documents or pleadings filed or served must be signed:

(1) By the person or persons filing the same; or

(2) By an officer of a corporation; or

(3) By an officer or authorized employee of a government instrumentality; or

(4) By a partner or a designated agent of a partnership; or

(5) By an attorney or other person having the authority to sign.

(c) A pleading or document will be considered served and/or filed as of the date of the postmark (or otherwise shown for government-franked mail) as of the date actually delivered in person; or as shown by electronic mail transmission.

(d) Time periods begin to run on the day following the date of the document, paper or event that begins the time period. Saturdays, Sundays and Federal holidays will be included in computing such time, except that when such time expires on a Saturday, Sunday or Federal holiday, such period will be extended to include the next business day. This method also applies to any act, such as paying a civil penalty, required by this part to take place within a specified period of time. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays or legal holidays will be excluded in the computation.

Subpart H—Civil Penalties

§ 280.700 General.

(a) This subpart sets forth the procedures governing the Commerce Department administrative procedures for the assessment of civil penalties under the Fastener Quality Act.

(b) A Notice of Violation will be issued by the Commerce Department's General Counsel. This will be served personally or by registered mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent) or his or her designated agent for process. The Notice of Violation will contain: (1) A concise statement of the facts believed to show the violation; (2) A specific reference to the provision of the Act or the regulations in this part allegedly violated; (3) The findings and conclusions upon which the Department bases the penalty assessment; and (4) The amount of the civil penalty assessed. The Notice will also advise of the respondent's rights upon receipt of the Notice Rights Section. A copy of the regulations governing the proceedings will also be included.

(c) In assessing a civil penalty, the Department will take into account information available to the Department concerning any fact which might be considered under the Act relevant to the alleged violation.

(d) The Notice of violation may also contain, where appropriate, a proposal for settlement of the case. The Department may also attach to the Notice documents derived from an investigation of the allegations or any other document which delineates facts which point to a violation of the Act.

§ 280.701 Administrative procedures after receipt of a notice of violation.

(a) The respondent has 30 days from the receipt of the Notice of Violation in which to respond. During this period the respondent may:

(1) Accept the penalty or settlement offer, if any, by taking the action required in the Notice.

(2) Seek to have the Notice amended, modified or rescinded.

(3) Request a hearing under this section.

(4) Request an extension of time to respond under this section. The General Counsel may grant such an extension of time to respond up to 30 additional days unless it is determined that the requester, exercising due diligence, could have responded within the original 30 day period. In that case such a request will be denied. A telephonic response within 48 hours of the request will be considered an effective response when it is followed by a written confirmation.

(5) The General Counsel may, for good cause, grant an extension beyond 30 days where the interest of justice will be served.

(6) Take no action. This signals that the Notice is final under § 280.700.

(b) If the respondent requests a hearing, such request must be in writing and be dated. It must be served either in person or by the mail, return receipt requested, to the address specified in the Notice. A copy of the Notice must be attached to the request and the appropriate case number should be referred to in the request. The General Counsel will then promptly forward the request for hearing to the judge.

(c) Any denial of a request which bases the denial on untimeliness shall be in writing.

(d) The General Counsel may, at his or her discretion, treat any communication from a respondent, as a request for a hearing under paragraph (a)(3) of this section.

§ 280.702 Hearings and administrative review.

(a) Any hearing request under § 280.701(a)(3) is governed by the

hearing and review procedures under subpart I.

(b) In any hearing held in response to a request under § 280.701(a)(3), a judge will render an initial decision. Any party to the action may seek the Under Secretary's review of the judge's initial decision subject to the provisions of Subpart I.

§ 280.703 Final Administrative Decision.

If there is no timely request for a hearing by the respondent as provided for in § 280.701(a)(3), the Notice becomes effective as the final administrative decision and order of the Department on the 30th day after service of the Notice or on the last day of any extension period granted.

§ 280.704 Payment of assessed civil penalty.

(a) The respondent must make full payment of the civil penalty assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of the Department under § 280.830 of subpart I. Payment must be made by mailing or delivering to the Department at the address specified in the Notice, a check or money order made payable in United States currency for the full amount of the assessed penalty. This check or money order should be addressed to "Treasurer of the United States" or as otherwise directed.

(b) If the respondent fails to pay the civil penalty assessed in full and in a timely manner the Department may request that the Department of Justice recover the amount assessed in any appropriate United States District Court.

§ 280.705 Modification of a civil penalty.

(a) The General Counsel has the sole discretion to compromise, modify, remit or mitigate with or without conditions, any civil penalty assessed which would serve the interest of justice.

(b) The modification authority of the General Counsel under this section is in addition to any similar authority provided for in any other statute or regulation and may be exercised either upon the initiative of the General Counsel or in response to the request of an alleged violator or interested party. Any such request should be sent to the General Counsel at the address listed in the Notice.

(c) The existence of the modification authority of the General Counsel under this section in no way alters the date upon which the assessment becomes final or penalty is due.

§ 280.706 Joint and several liability.

(a) The General Counsel may assess a civil penalty against two or more respondents jointly and severally. Each respondent is liable for the entire penalty, but no more than the amount finally assessed may be collected from the respondents.

(b) A hearing request by one of the respondents will be considered a request by the other respondents. The General Counsel, having received the hearing request from one respondent, will send a copy of it to the other joint and several respondents in the case.

(c) A decision by the judge or the Under Secretary after a hearing before the judge requested by one joint and several respondents, is binding on all parties and on all other joint and several respondents, whether or not they enter an appearance.

§ 280.707 Factors considered in civil penalty assessment.

(a) The following factors shall be considered in the assessment of a civil penalty: The nature, circumstances and gravity of the alleged violation; with respect to the person alleged to have committed the violation, the degree of culpability; any history of prior offenses; the respondent's ability to continue to do business, any good faith effort to achieve compliance, ability to pay the penalty and other such matters as justice and fairness may require.

(b) The Department may, in consideration of the respondent's ability to pay, increase or decrease a penalty from an amount that would otherwise be warranted by the other relevant factors. A penalty may be increased if the respondent's ability to pay is such that a higher penalty is necessary to deter future violations or for commercial violators to make a penalty more than just a cost of doing business. A penalty can be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate penalty amount.

(c) If the respondent asserts that a penalty should be reduced because of an inability to pay, the respondent has the burden of proving such an inability by providing verifiable, complete and accurate financial information to the General Counsel. The General Counsel will not consider the respondents inability to pay unless the respondent, upon request, submits such financial information as the General Counsel determines is necessary to evaluate the financial condition of the respondent. Depending on the circumstances, the General Counsel may require the respondent to answer specific interrogatories or submit a financial statement. If the respondent is unwilling to submit the requested information, it will be presumed that he or she has the ability to pay the penalty imposed.

(d) Financial information relevant to a respondent's ability to pay includes but is not limited to: The respondent's cash and liquid assets, ability to borrow, net worth, liabilities, income, profits, anticipated profits, cash flow and the ability of the respondent to pay in installments over time. A respondent will be considered able to pay a penalty even if he or she must take such actions as pay the installments over time, borrow money, liquidate assets or reorganize his or her business. The Department's consideration of the respondent's ability to pay does not preclude an assessment of a penalty that would cause or contribute to the bankruptcy or other discontinuation of the respondent's business.

(e) Financial information regarding the respondent's ability to pay should be submitted to the General Counsel as soon as possible after the receipt of the Notice of Violation. If the respondent requests a hearing on the offense alleged in the Notice and wants his or her ability to pay to be considered in the course of the initial decision of the judge—verifiable financial information must be submitted to the General Counsel at least 15 days in advance of the hearing. In deciding whether to submit such information, the respondent should keep in mind that the judge may assess de novo a civil penalty either greater or lesser than that assessed in the Notice.

(f) Issues regarding the ability to pay will not be considered in an administrative review of an initial decision if the financial information provided was not previously presented by the respondent to the judge at the hearing.

Subpart I—Hearing and Appeal Procedures

General

§ 280.800 Scope.

(a) This subpart states the procedures governing the conduct of the hearings and the issuance of decisions by the judge or Under Secretary in administrative proceedings involving alleged violations of the Fastener Quality Act and of the regulations promulgated relevant to the implementation of the Act.

(b) Each judge is delegated the authority to render the initial or final decision of the Agency in proceedings subject to the provisions of this subpart, and to take action to promote the efficient and fair conduct of hearings as set out in this subpart. The judge has no

authority to rule on challenges to the validity of the regulations promulgated by the U.S. Department of Commerce.

(c) This subpart is not an independent basis for claiming the right to a hearing, but instead prescribes procedures for the conduct of hearings.

§ 280.801 The docketing of cases.

Each request for a hearing will be assigned a docket number and thereafter the proceeding will be referred to by number. Written notice of the assignment of a hearing to a judge will be given promptly to the parties. The docket number must appear on all subsequent documents, pleadings and papers relating to the case.

§ 280.802 Filings.

(a) Pleadings, papers and all other documents must be filed in conformance with § 280.805 and copies must be served on all interested parties.

(b) Unless otherwise ordered by the judge, discovery requests and answers will be served on the opposing parties and copies will be delivered in person or via the mail, return receipt requested, to the judge.

§ 280.803 Judge—scope of authority.

The judge has all the powers and authority necessary to preside over the parties and the proceedings, to hold prehearing conferences, to conduct the hearing, to make the decision in accordance with this part and 5 U.S.C. 554 through 557, including but not limited to the following:

(a) Rules on a request to participate as a party to the proceeding by allowing, denying or limiting such participation;

(b) Schedule the time, place and manner of conducting a prehearing conference or hearing, to continue the conference or hearing from day to day, adjourn the hearing to a later date or a different place and to reopen the hearing at any time before the issuance of a decision. These decisions are all at the discretion of the judge but considering the convenience and necessity of the parties and witnesses;

(c) Schedule and monitor the course of the hearing and conduct of the participants and the media, including the authority to close hearings in the interests of justice; seal the record from public scrutiny to protect privileged information, trade secrets, information which requires protection due to national security interests and/or confidential commercial or financial information; and to strike testimony of a witness who refuses to answer a question ruled to be proper;

(d) Administer oaths and affirmations to witnesses;

(e) Rule on discovery requests, establish discovery schedules, and whenever the ends of justice require such, take or cause depositions or interrogatories to be taken and to issue protective orders in accordance with § 280.815;

(f) Rule on motions, procedural requests and similar matters;

(g) Receive, exclude, limit and otherwise rule on offers of proof and evidence;

(h) Examine and cross-examine witnesses and introduce into the record, on the judge's own initiative documentary evidence;

(i) Rule on requests for appearances of witnesses or production of documents and take appropriate action upon the failure of a party to effect the appearance or production of a witness or a document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;

(j) Take judicial notice of any appropriate matter not appearing in evidence;

(k) Assess a penalty de novo without being bound by the amount assessed in the Notice of Violation where there is just cause for such an action and the reasons for the penalty are clearly stated;

(l) Prepare and submit a decision or other appropriate disposition document and certify the record;

(m) Grant interim or preliminary relief where irreparable injury would otherwise occur to an interested party or where the interests of justice requires such relief.

§ 280.804 Disqualification of the judge.

(a) The judge may withdraw voluntarily from a particular case when the judge deems it necessary that he or she be disqualified for good cause.

(b) A party may, in good faith, request a judge to withdraw from a case on the grounds of personal bias or other conflict which requires such disqualification. The party seeking the disqualification must file a timely affidavit with the judge which sets forth the facts alleged to constitute the grounds for the disqualification, and the judge will rule on the matter. If the judge rules against disqualification, all matters relating to the disqualification will be placed on the record.

§ 280.805 Pleadings, motions and service of process.

(a) The original of all pleadings and documents, containing the appropriate docket number, must be filed with the judge and a copy must be served upon each party to the case. All pleadings and documents, when submitted for filing, must show that appropriate and proper service has been made upon all parties. Such service must be made in accordance with § 280.607.

(b) Motions must normally be made in writing and must clearly state the purpose of and the relief sought by the motion. It must cite the legal authority relied upon in making the request and the facts claimed to constitute the grounds requiring the relief requested.

(c) Unless otherwise provided, the answer to any written motion, pleading or petition must be served within 20 days after the date of service thereof. If a motion states that opposing counsel has no objection, it may be acted on as soon as practicable, without waiting for the full 20-day period to expire. Answers must be in writing, unless made in response to an oral motion made at a hearing; must fully advise the parties and the judge concerning the nature of the opposition; must admit or deny specifically and in detail each material allegation of the pleading answered; and must state clearly and concisely the facts and matters of law relied upon.

(d) A response to an answer will be called a *reply*. The reply may be served within 15 days of the service of an answer. The judge has the discretion to dispense with the reply. No further responses are permitted.

§ 280.806 Amendment of the pleadings and/or the record.

The judge, upon his or her own initiative or upon application by a party may order a party to make a more definite statement of any pleading. The judge has discretion to permit either party to amend its pleadings upon conditions fair to both parties. Harmless errors may be corrected and broad discretion will be exercised by the judge in permitting such corrections.

§ 280.807 Extensions of time.

The judge, where appropriate, may grant, as provided for in § 280.803 any reasonable request for an extension of time. Requests for extension of time, except in extraordinary circumstances, must be in writing.

§ 280.808 Summary decision.

(a) A Motion for a Summary Decision may be made, by a party or on the judge's own motion, anytime after commencement of the proceedings which may, if granted, may dispose of all or some of the issues.

(b) A summary decision may be rendered if the entire record shows as to the issue(s) under consideration: (1)

There is no genuine issue as to any material fact; and (2) That the moving party is entitled to a summary decision as a matter of law.

§ 280.809 Failure to appear.

(a) If a party should fail to appear after proper notice of service, the hearing may proceed. The record will note the failure to appear and the hearing may be conducted with the parties present, or may be canceled if the judge, in his or her discretion, determines that proceeding with the hearing will not aid in rendering a decision.

(b) The judge will place in the record all the facts concerning the issuance and service of notice concerning the time and place of the hearing.

(c) The judge may deem a failure of a party to appear, after proper notice, a waiver of any right to a hearing and consent to the making of a decision on the record.

§ 280.810 Dismissal for failure to prosecute or defend.

Whenever the record shows that a party has failed to file documents, respond to orders or notices from the judge or to otherwise indicate an intention on the part of either party not to participate further in the proceeding, the judge may issue an order to show cause why the case should not be dismissed or disposed of adversely to that party's interest, or make such order as is necessary for the just and expeditious resolution of the case, including the dismissal of the matter from the docket for failure to prosecute or defend.

§ 280.811 Settlements and settlement offers.

If a settlement offer is made and accepted before the judge has certified the record, the judge may require the submission of a copy of the settlement agreement to assure that the judge's consideration of the case is completed and to order the matter dismissed on the basis of the agreement.

§ 280.812 Stipulations.

The parties may stipulate to any matter involved in the proceedings and include such stipulations in the record with the consent of the judge. Written stipulations must be signed and served on all parties.

§ 280.813 Case consolidation.

A judge may order that two or more cases be consolidated where the issues involved or the parties involved are substantially the same as long as such a consolidation will not adversely affect the rights of any interested party.

§ 280.814 Prehearing conferences.

(a) Prior to any hearing or at any other time deemed appropriate, the judge, may upon his or her own initiative, or upon the application of any party, arrange for a telephonic conference and where appropriate, record such a conference, or direct the parties to appear for such a conference to consider:

(1) Simplification or clarification of the issues or the settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions, agreements or rulings on the admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings necessary to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of other cumulative evidence;

(5) The procedure, course and conduct of the hearing;

(6) The distribution to the parties and to the judge, prior to the hearing of written testimony and exhibits in order to expedite the hearings;

(7) Such other matters as may aid in the disposition of the proceeding;

(b) The judge in his or her own discretion may issue an order showing the matters disposed of in the course of such a conference.

Discovery

§ 280.815 Discovery generally.

(a) Prior to any hearing the judge will normally require from the parties a written submission stating their preliminary position on legal, factual and procedural issues. It will also include a listing of potential witnesses and a summary of their testimony as well as a listing of exhibits. This document must be served on all other parties and will normally eliminate the need for further discovery. Failure to provide the requested information may result in the exclusion of witnesses and/or exhibits at the hearing. A party has an affirmative obligation to supplement the submission as new information becomes known to the party.

(b) *Additional discovery.* Upon written motion by a party, the judge may allow additional discovery only on a showing of relevance, need and reasonable scope of evidence sought by one or more of the following methods:

(1) Deposition upon oral examination or written questions;

(2) Written interrogatories;

(3) Production of documents or items for inspection or other purposes;

(4) Requests for admission.

(c) *Time limitations.* Motions for depositions, interrogatories, admissions or production of documents or items may not be filed within 20 days of a hearing except on the order of a judge for good cause shown. Oppositions to a discovery motion must be filed within 10 days of service unless otherwise provided in these rules or by a judge.

(d) *Opposition.* Opposition to any discovery motion or portion thereof must state with particularity the grounds relied upon. Failure to object in a timely manner constitutes waiver of objection.

(e) *Scope of discovery.* The judge may limit the scope of discovery, subject matter, method, time, place or manner of discovery. Unless otherwise limited by order of the judge the scope of discover will be as follows:

(1) *In General.* As followed under paragraph (b) of this section, parties may obtain discovery of any matter, not privileged, that is relevant to the allegations of the charging document, to the proposed relief, or to the defenses of the respondent, or that appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Hearing preparation—materials.* A party may not obtain discovery of materials prepared in anticipation of litigation except upon a showing that the party seeking the discovery has a substantial need for the materials in preparation of his or her case, and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party are not discoverable under this section.

(3) *Hearing preparation—experts.* A party may discover the substance of the facts and opinions to which an expert witness is expected to testify and a summary of the grounds for each opinion. A party may also discover facts known or opinions held by an expert consulted by another party in anticipation of litigation but not expected to be called as a witness upon a showing of exceptional circumstances making it impracticable for the party seeking discovery to obtain such facts or opinions by other means.

(f) *Failure to comply with subpoena.* If a party fails to comply with any order or subpoena concerning discovery, the judge may, in the interest of justice:

(1) Make the inference that the admission, testimony documents, or other evidence would have been adverse to the party;

(2) Rule that the matter or matters covered by the subpoena are established adversely to the party;

(3) Rule that the party may not introduce evidence or otherwise rely upon, in support of any claim or defense, testimony by such party, officer or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to the introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Strike part or all of a pleading, a motion or other submission by the party, concerning matters covered by the order or subpoena;

(6) Render a decision of the proceeding against the party.

§ 280.816 Depositions.

(a) *Notice.* If a motion for deposition is granted, and unless otherwise ordered by the judge, the party taking the deposition of any person must serve on that person, and each other party, written notice at least 15 days before the deposition would be taken (or 30 days if the deposition is to be taken outside the United States). The notice must state the name and address of each person to be examined, the time and place where the examination would be held, the name and mailing address of the person before whom the deposition would be taken, and the subject matter about which each person would be examined.

(b) *Taking depositions.* Depositions may be taken before any officer authorized to administer oaths by the law of the United States or of the place where the examination is to be held, or before each person appointed by the judge. Each deponent will be sworn, and any party has the right to cross-examine. Objections are not waived by failure to make them during the deposition unless the ground of the objection is one that might have been removed if presented at that time. The deposition will be recorded, transcribed, and signed by the deponent, unless waived, and certified by the officer by whom the deposition was taken. All transcription costs associated with the testimony of a deponent will be borne by the party seeking the deposition. Each party will bear its own expense for any copies of the transcript.

(c) *Alternative methods for taking depositions.* By order of the judge, the parties may use other methods of deposing parties or witnesses, such as telephonic depositions or depositions upon written questions. Objections to the form of the written questions are waived unless made within five days of service of the questions.

(d) *Use of depositions at hearing.* (1) At hearing any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though a witness were then testifying, may be used against any party who was present or represented at the taking of the deposition, or had reasonable notice.

(2) The deposition of a witness may be used by any party for any purpose if the judge finds:

(i) That the witness is unable to attend due to death, age, health, imprisonment, disappearance or distance from the hearing site;

(ii) That exceptional circumstances make it desirable, in the interest of justice, to allow a deposition to be used;

(3) If only part of the deposition is offered in evidence by a party, any party may introduce any other part.

§ 280.817 Interrogatories to parties.

(a) *Use at hearing.* If so ordered by the judge, any party may serve upon any other party written interrogatories. Answers may be used in the same manner as depositions under § 280.816.

(b) *Answers and objections.* Answers and objections must be made in writing, under oath, and reasons for the objection must be stated. Answers must be signed by the person making them and objections by the attorney making them. Unless otherwise ordered, answers and objections must be served on all parties within 20 days after service of interrogatories.

(c) *Option to produce records.* Where the answer to an interrogatory may be ascertained from the records of the party upon whom the interrogatory is served, it is sufficient to specify such records and afford the party serving the interrogatories an opportunity to examine them.

§ 280.818 Admissions.

(a) *Request.* If ordered by the judge any party may serve on any other party a written request for admission of the truth of any relevant matter of fact set forth in the request, including an assessment as to whether or not any relevant document described in the request is in fact genuine. Copies of the documents must be served with the request. Each matter of which an admission is requested must be separately stated.

(b) *Response.* Each matter is admitted unless a written answer or objection is served within 20 days of service of the request, or within such other time as the judge may allow. The answering party must specifically admit or deny each matter,or state the reasons why he or she cannot truthfully admit or deny it.

(c) *Effect of admission.* Any matter admitted is conclusively established unless the judge on motion permits withdrawal for good cause shown.

§ 280.819 Production of documents and inspection.

(a) *Scope.* If ordered by the judge, any party may serve on any other party a request to produce a copy of any document, or to inspect, copy, photograph or test any tangible thing in possession, custody or control of the party upon whom the request is served.

(b) *Procedure.* The request must set forth:

(1) The items to be produced or inspected by item or by category, described with reasonable particularity, and a reasonable time, place and manner for inspection.

(2) The party upon whom the request is served must serve within 20 days a response or objections, which must address each item or category and include copies of the requested documents.

§ 280.820 Subpoenas.

(a) *In general.* Subpoena for attendance and testimony of witnesses and the production of documentary evidence for the purpose of discovery or hearing may be issued as authorized by the statute.

(b) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or disposition.

(c) *Motions to quash.* Any person whom a subpoena is directed or any party may move to quash or limit the subpoena within 10 days of its service or on or before the time specified for compliance, whichever is shorter. The judge may quash or modify the subpoena.

(d) *Enforcement.* Where there is refusal to respond to a subpoena or where the subpoena is not fully compiled with, the Technology Administration may request that the Justice Department invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of evidence.

§ 280.821 Hearings: notice of time, place and hearing.

(a) The judge will promptly serve on the parties notice of the time and place of the hearing. The hearing will not, except in extraordinary circumstances, be held less than 20 days after service of the notice of hearings.

(b) In setting a place for the hearing, the judge will consider the convenience and costs to the parties, including but not limited to transportation costs, living expenses of witnesses, attorneys and

the judge; place of residence of the respondent(s); scheduling of other hearings within the same region; and the availability of facilities and court reporters.

(c) The judge may order that all or part of the proceeding be heard on submissions or affidavits if it appears that substantially all important issues of material fact may be resolved by means of written materials and that efficient disposition of the proceeding can be made without oral hearing. For good cause, the judge may also order that the testimony of witnesses be taken by telephone.

§ 280.822 Evidence.

(a) At the hearing, every party has the right to present oral or documentary evidence in support of its case or defense, to submit rebuttable evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. This paragraph should not be interpreted so as to diminish the powers and duties of the judge under this subpart.

(b) All evidence that is relevant, material, reliable, and probative and not unduly repetitious or cumulative, is admissible at the hearing. Formal rules of evidence do not necessarily apply to the proceedings, and hearsay evidence is not admissible as such.

(c) Formal exceptions to the rulings of the judge are unnecessary. It is sufficient that a party, at the time of the ruling makes known the action that it desires the judge to take or its objection to an action taken, and the grounds therefore. Rulings on each objection must appear in the record.

(d) In any case involving a charged violation of the Act or its implementing regulations in which the party charged had admitted an allegation, evidence may be taken to establish matters of aggravation or mitigation.

(e) Exhibits in a foreign language may be translated into English before such exhibits are offered into evidence. Copies of both the translated and untranslated versions of the proposed exhibits, along with the name of the translator, must be served on the opposing party at least 10 days prior to a hearing unless the parties otherwise agree.

(f) A party who intends to raise an issue concerning the law of a foreign country must give reasonable notice. The judge, in determining foreign law may consider any relevant material or source, whether or not submitted by a party.

§ 280.823 Witnesses.

(a) Any witness not a party may have a personal counsel to advise him or her as to his or her rights, but such counsel may not otherwise participate in the hearing.

(b) Witnesses who are not parties may be excluded from the hearing room prior to the taking of testimony.

(c) Witnesses other than employees of the Agency subpoenaed under this part, including § 280.820, will be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken are entitled to the same fees as are paid for like services in the courts of the United States. Fees and any other related expenses for Agency employees as authorized by the Department Travel Manual will be paid by the party at whose instance the witness appears or the deposition is taken.

(d) If a witness is expected to testify in a language other than the English language, the party sponsoring the witness must provide for the service of an interpreter and advise opposing counsel 10 days prior to the hearing concerning the extent to which interpreters are used. When available, the interpreter must be court certified under 28 U.S.C. 1827.

§ 280.824 Interlocutory appeals.

(a) At the request of a party or on the judge's own initiative, the judge may certify to the Under Secretary for review, a ruling that does not finally dispose of the proceeding, if the judge determines that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(b) Upon certification by the judge of the interlocutory ruling for review, the parties have 10 days to serve any briefs associated with the certification. The Under Secretary will promptly decide the matter.

(c) No interlocutory appeal lies as to any ruling not certified by the judge.

§ 280.825 Ex parte communications.

(a) Except to the extent required for disposition of ex parte matters as required by law, after issuance of the Notice of Violation and until final decision of the Agency is effective under this part, no ex parte communication relevant to the merits of the proceeding may be made, or knowingly caused to be made:

(1) By the judge or an Agency employee involved in the decisional process of the proceeding to any interested person outside the Department of Commerce or to any Agency employee involved in the investigation or prosecution of the case;

(2) By any Agency employee involved in the investigation or prosecution of the case to the judge or to any Agency employee involved in the decisional process of the proceeding; or

(3) By an interested person outside the Department of Commerce to the judge or to any agency employee involved in the decisional process of the proceeding.

(b) An agency employee or judge who makes or receives a prohibited communication must place in the hearing record the communication and any response thereto, and the judge or the Under Secretary, as appropriate, may take any action consistent with this part, the applicable statute and 5 U.S.C. 556(d) and 557(d).

(c) Agency counsel may not participate or advise in the decision of the judge or the Under Secretary's review thereof except as a witness or counsel in the proceeding in accordance with this subpart. In addition, the judge may not consult any person or party on a fact in issue unless notice and an opportunity for all parties to participate is provided.

(d) (1) Paragraphs (a) and (b) of this section do not apply to communications concerning national security or foreign policy matters. Such ex parte communications to or from an Agency employee on national security or foreign policy matters, or from employees of the United States Government involving intergovernmental negotiations, are allowed if the communicators position with respect to those matters cannot otherwise be fairly presented for reasons of national security or foreign policy.

(2) Ex parte communications subject to this paragraph (d) will be made part of the record to the extent that they do not include information classified under an Executive Order. Classified information will be included in a classified portion of the record that will be available for review only in accordance with applicable law.

§ 280.826 Post hearing: official transcript.

(a) The official transcript of testimony taken, together with any exhibits, briefs or memoranda of law filed therewith, will be filed with the judge. Transcripts of testimony will be available in any proceeding and will be supplied to the parties upon the payment of fees at the rate provided for in the agreement with the reporter.

(b) The judge may determine whether an "ordinary" copy, "daily copy", or other copy (as those terms are defined by contract) will be necessary and required for the proper conduct of the proceeding.

§ 280.827 Post hearing briefs.

(a) Unless a different schedule is established in the discretion of the judge, including the procedure in paragraph (b) of this section, the parties may file proposed findings of fact and conclusions of law, together with supporting briefs, within 30 calendar days from service of the hearing transcript. Reply briefs may be submitted within 15 days after service of the proposed findings and conclusions to which they respond, unless the judge sets a different schedule.

(b) In cases involving few parties, limited issues, and short hearings, the judge may require that any proposed findings, conclusions and reasons in support be presented orally at the close of the hearing. In such case, the judge will advise the parties in advance of such a hearing.

§ 280.828 Documents, copies and exhibits.

(a) If original documents have been received in evidence, a true copy thereof or for such part as may be material or relevant, may be submitted in lieu of the original during the hearing or at its conclusion. The judge may in his or her discretion, and after notice to the other parties, allow the withdrawal of original exhibits or any part thereof by the party entitled thereto for the purpose of substituting copies. The substitution of true copies of exhibits, or any part thereof, may be required by the judge in his or her discretion as a condition of granting permission for withdrawal of the original.

(b) Photographs may be substituted for physical evidence in the discretion of the judge.

(c) Except upon the judge's order, or upon request by a party, physical evidence will be retained after the hearing by the authorized enforcement office responsible for the case.

§ 280.829 Record of decision.

(a) The exclusive record of decision consists of the official transcript of testimony and proceedings; exhibits admitted into evidence; briefs pleadings and other documents filed in the proceeding; and descriptions or copies of matters, facts, or documents officially noticed in the proceeding. Any other exhibits and records of any ex parte communications will accompany the record of the decision.

(b) The judge will arrange for appropriate storage of the records of any proceeding, which place of storage need not necessarily be located physically within the office of the judge.

(c) Exhibits offered after the close of a hearing will not be admitted, unless the judge specifically keeps open or reopens the record to admit them.

§ 280.830 Decision.

(a) After expiration of the period provided for in § 280.805, for the filing of reply briefs (unless the parties have waived briefs or presented proposed findings orally at the hearing), the judge will render a written decision upon the record finding in the case setting forth:

(1) Findings and conclusions, and the reasons and basis thereof, on all material issues of fact, law or discretion presented on the record, and on the ruling of any proposed findings or conclusions presented by the parties;

(2) A statement of any facts noticed or relied upon in the decision; and

(3) Such other matters as the judge considers appropriate.

(b) If the parties have presented oral proposed findings at the hearing or have waived presentation of proposed findings, the judge may at the termination of the hearing announce the decision subject to the later issuance of a written decision made under paragraph (a) of this section. The judge may in such a case direct the prevailing party to prepare proposed findings, conclusions and an order.

(c) The judge will serve the written decision on each of the parties by registered or certified mail, return receipt requested, and will promptly certify to the Under Secretary, the record, including the original copy of the decision, as complete and accurate.

(d) Unless the judge orders a stay or unless a petition for discretionary review is filed or the Under Secretary issues an order to review upon his or her own initiative, an initial decision becomes effective as the final administrative decision of the U.S. Department of Commerce, 30 days after service, unless otherwise provided by statute or regulation.

§ 280.831 Petition for reconsideration.

Unless an order or a judge specifically provides otherwise, any party may file a petition for reconsideration of an order or decision issued by the judge. Such petitions must state the matter claimed to have been erroneously decided and the alleged errors or relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of such an order or decision or its effective date. Within 15 days after the petition is filed, any party to the proceeding may file an answer in support or opposition. In the judge's discretion, the hearing may be reopened to consider that matters raised in the petition that could not have been reasonably foreseen prior to the issuance of the order or decision.

§ 280.832 Administrative review of the decision.

(a) Subject to the requirements of this section, any party may petition for review of an initial decision of the judge within 30 days after the date the decision is served. The petition shall be addressed to the Under Secretary and filed at the following address: Under Secretary for Technology, United States Department of Commerce, room 4824, 14th & Constitution Avenue, NW., Washington, DC 20230.

(b) Review by the Under Secretary of an initial decision is discretionary and is not a matter of right. A petition for review must be served upon all parties. If a party files a timely petition for discretionary review, or action is taken by the Under Secretary on his or her own initiative, the effectiveness of the initial decision is stayed until further order of the Under Secretary.

(c) Petitions for discretionary review may be filed only upon one or more of the following grounds:

(1) A finding of a material fact is clearly erroneous based upon the evidence in the record;

(2) A necessary legal conclusion is contrary to law or case precedent;

(3) A substantial and important question of law, policy or discretion is involved (including the amount of the civil penalty); or

(4) A prejudicial error has occurred.

(d) Each issue must be separately numbered, concisely stated, and supported by detailed citations to the record, statutes, regulations, and principal authorities. Issues of fact or law not argued before the judge may not be raised on review unless they were raised for the first time in the initial decision, or could not reasonably have been foreseen and raised by the parties during the course of the hearings. The Under Secretary will not consider new or additional evidence that is not part of the record before the judge.

(e) No oral argument on petitions for discretionary review will be allowed.

(f) Within 30 days after service of a petition for discretionary review, any party may file and serve an answer in support or in opposition. No further replies are allowed.

(g) If the Under Secretary declines to exercise discretionary review, such order will be served on all the parties personally or by registered or certified mail, return receipt requested, and will specify the date upon which the judge's decision will become effective as the final decision of the U.S. Department of

Commerce. The Under Secretary need not give the reasons for declining the review.

(h) If the Under Secretary grants a petition for discretionary review, he or she will issue an order specifying issues to be briefed and a briefing schedule. Such issues may constitute one or more of the issues raised in the petition for discretionary review and/or matters the Under Secretary wishes to review on his or her own initiative. Only those issues specified in the order may be argued in the briefs and considered by the Under Secretary. No oral argument will be permitted.

(i) After the expiration period for filing briefs under paragraph (h) of this section, the Under Secretary will render a written decision on the issues under review. The Under Secretary will transmit the decision to each of the parties by registered or certified mail, return receipt requested. The Under Secretary's decision becomes the final administrative decision on the date served, unless otherwise provided for in the decision.

Subpart J—Recordal of Insignia

§ 280.900 Recorded insignia required prior to offer for sale.

(a) Any manufacturer or private label distributor of a fastener must, prior to any sale or offer for sale of any fastener which is required by the standards and specifications by which it is manufactured to bear a raised or depressed insignia identifying its manufacturer or private label distributor, apply for and record an insignia to be applied to any fastener which is to be sold or offered for sale to ensure that each fastener may be traced to its manufacturer or private label distributor.

(b) The manufacturer's or private label distributor's insignia must be applied to the head of any fastener which is sold or offered for sale. If the fastener has no head, the insignia must be applied to another surface area in a legible manner.

(c) The insignia must be applied through a raised or depressed impression. The insignia must be readable with no greater than 10x magnification.

The Written Application

§ 280.910 Applications for insignia.

(a) Each manufacturer or private label distributor must submit a written application for recordal of an insignia along with the prescribed fee. The application must be in a form prescribed by the Commissioner.

(b) The written application must be in the English language and must include the following:

(1) The name of the applicant;

(2) The address of the applicant;

(3) The entity, domicile, and state of incorporation, if applicable, of the applicant;

(4) Either (i) A request for recordal and issuance of a unique alphanumeric designation by the Commissioner, or (ii) A request for recordal of a trademark, which is the subject of either a duly filed application or a registration for fasteners in the name of the applicant for fasteners in the U.S. Patent and Trademark Office on the Principal Register, indicating the application serial number or registration number and accompanied by a copy of the drawing page of the application or a copy of the registration;

(5) A statement that the applicant will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the person signing the application on behalf of the applicant has knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the applicant; and

(7) A verification stating that the person signing declares under penalty of perjury under the laws of the United States of America that the information and statements included in the application are true and correct.

(c) An applicant may designate only one registered trademark for recordal on the Fastener Insignia Register in a single application. The trademark application or registration which forms the basis for the fastener recordal must be in active status at the time of the application for recordal.

(d) Applications and other documents should be addressed to the Commissioner of Patents and Trademarks, Washington DC 20231; Box Fastener.

§ 280.911 Review of the application.

The Commissioner will review the application. If the application does not contain one or more of the elements required by § 280.910, the Commissioner will not issue a certificate of recordal, and will return the papers and fees. The Commissioner will notify the applicant of any defect in the application. Applications for recordal of an insignia may be re-submitted to the Commissioner at any time.

§ 280.912 Certificate of recordal.

If the application complies with the requirements of § 280.910, the Commissioner shall accept the application and issue a certificate of recordal. Such certificate shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and a record shall be kept in the Patent and Trademark Office. The certificate of recordal shall display the recorded insignia of the applicant, and state the name, address, legal entity and domicile of the applicant, as well as the date of issuance of such certificate.

§ 280.913 Recordal of additional insignia.

(a) A manufacturer or private label distributor to whom the Commissioner has issued an alphanumeric designation may apply for recordal of its trademark for fasteners if the trademark is the subject of a duly filed application or is registered in the U.S. Patent and Trademark Office on the Principal Register. Upon recordal, either the alphanumeric designation or the registered mark, or both, may be used as recorded insignias.

(b) A manufacturer or private label distributor for whom the Commissioner has recorded a trademark as its fastener insignia, may apply for issuance and recordal of an alphanumeric designation as a fastener insignia. Upon recordal, either the alphanumeric designation or the trademark, or both, may be used as recorded insignias.

Post-Recordal Maintenance

§ 280.920 Maintenance of the certificate of recordal.

(a) Certificates of recordal remain in an active status for five years and may be maintained in an active status for five-year periods running consecutively from the date of issuance of the certificate of recordal upon compliance with the requirements of § 280.920(c).

(b) Maintenance applications shall be required only if the holder of the certificate of recordal is a manufacturer or private label distributor at the time the maintenance application is required.

(c) Certificates of recordal will be designated as inactive unless, within six months prior to the expiration of each five-year period running consecutively from the date of issuance, the certificate holder files the prescribed maintenance fee and the maintenance application. The maintenance application must be in the English language and must include the following:

(1) The name of the applicant;

(2) The address of the applicant;

(3) The entity, domicile, and state of incorporation, if applicable, of the applicant;

(4) A copy of applicant's certificate of recordal;

(5) A statement that the applicant will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the person signing the application on behalf of the applicant has knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the applicant; and

(7) A verification stating that the person signing declares under penalty of perjury under the laws of the United States of America that the information and statements included in the application are true and correct.

(d) Where no maintenance application is timely filed, a certificate of recordal will be designated inactive. However, such certificate may be designated active if the certificate holder files the prescribed maintenance fee and application and an additional surcharge within six months following the expiration of the certificate of recordal.

(e) After the six-month period following the expiration of the certificate of recordal, the certificate of recordal shall be deemed active only if the certificate holder files an application with the prescribed fee for obtaining a fastener insignia and attaches a copy of the expired certificate of recordal.

(f) A separate maintenance application and fee must be filed and paid for each recorded insignia.

§ 280.921 Notification of changes of address.

The applicant or the holder of a certificate of recordal shall notify the Commissioner of any change of address or change of name within six months. The holder must do so whether the certificate of recordal is active or inactive.

§ 280.922 Transfer or amendment of the certificate of recordal.

(a) The certificate of recordal cannot be transferred or assigned.

(b) The certificate of recordal may be amended only to show a change of name or change of address.

§ 280.923 Transfer or assignment of the trademark registration or the fastener insignia.

(a) A trademark application or registration which forms the basis of a fastener recordal may be transferred or assigned. Any transfer or assignment of such an application or registration shall be recorded in the Patent and Trademark Office within three months of the transfer or assignment. A copy of such transfer or assignment must also be sent to the Commissioner of Patents and Trademarks, Washington, DC 20231, Box Fastener.

(b) Upon transfer or assignment of a trademark application or registration which forms the basis of a certificate of recordal, the Commissioner shall designate the certificate of recordal as inactive. The certificate of recordal shall be deemed inactive as of the effective date of the transfer or assignment. Certificates of recordal designated inactive due to transfer or assignment of a trademark application or registration cannot be reactivated.

(c) An assigned trademark application or registration may form the basis for a new certificate of recordal.

(d) A fastener insignia consisting of an alphanumeric designation issued by the Commissioner cannot be transferred or assigned.

§ 280.924 Change in status of trademark registration or amendment of the trademark.

(a) The Commissioner shall designate the certificate of recordal as inactive, upon:

(1) Issuance of a final decision on appeal which refuses registration of the application which formed the basis for the certificate of recordal; or

(2) Abandonment of the application which formed the basis for the certificate of recordal; or

(3) Cancellation or expiration of the trademark registration which formed the basis of the certificate of recordal.

(b) Any amendment of the mark in an application or registration which forms the basis for a certificate of recordal will result in such certificate of recordal being designated inactive. The certificate of recordal shall become inactive as of the date of the amendment of the trademark. Application for recordal of the amended registered trademark may be submitted to the Commissioner at any time.

(c) Certificates of recordal designated inactive due to cancellation, expiration, abandonment or amendment of the trademark application or registration cannot be reactivated.

§ 280.925 Cumulative listing of recordal information.

The Commissioner shall maintain a record of the names, current addresses, and legal entities of all recorded manufacturers and private label distributors and their recorded insignia.

§ 280.926 Records and files of the Patent and Trademark Office.

The records relating to fastener insignia shall be open to public inspection. Copies of any such records may be obtained upon request and payment of the fee set by the Commissioner.

[FR Doc. 92-19228 Filed 8-14-92; 8:45 am]
BILLING CODE 3510-13-M

federal register

Monday
August 17, 1992

Part III

Congressional Budget Office

Transmittal of Sequestration Update for Fiscal Year 1993 to Congress and Office of Management and Budget; Notice

CONGRESSIONAL BUDGET OFFICE

Transmittal of Sequestration Update Report for Fiscal Year 1993 to Congress and the Office of Management and Budget

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Update Report for Fiscal Year 1993 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 92-19527 Filed 8-14-92; 8:45 am]

BILLING CODE 2107-11-M

federal register

Monday
August 17, 1992

Part IV

The President

Panama Canal Commission

35 CFR Part 133
Tolls for Use of Canal; Final Rule

THE PRESIDENT

PANAMA CANAL COMMISSION

35 CFR Part 133

RIN 3207-AA32

Tolls for Use of Canal

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This rule announces an increase of approximately 9.9% in the rates of tolls to become effective October 1, 1992. The basis for the toll increase is that the Commission anticipates that in fiscal years 1992 and 1993, it will experience, in the aggregate, a significant deficit created by a trend of nominal traffic and revenue growth inadequate to absorb cost increases due to inflation. The increase is necessary to comply with the requirement that tolls be set to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements, and working capital. The effect of this action is to increase the rate of tolls for: Merchant vessels, yachts, army and navy transports, colliers, hospital ships and supply ships, when carrying passengers or cargo, from $2.01 to $2.21 per net Panama Canal ton; vessels in ballast without passengers or cargo, from $1.60 to $1.76 per net Panama Canal ton; and other floating craft including warships, other than transports, colliers, hospital ships and supply ships from $1.12 to $1.23 per ton of displacement.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street, NW., suite 550, Washington, DC 20036-4996, (Telephone: (202) 634-6441).

SUPPLEMENTARY INFORMATION: On April 15, 1992, an advance notice of proposed rulemaking was published in the **Federal Register** (57 FR 13067) recommending a 9.9% increase in the rates of Canal tolls, to become effective on October 1, 1992. At that time, a written analysis showing the basis and justification for the proposed toll increase was made available to interested parties. The analysis demonstrates that the increase is necessary, notwithstanding that existing rates have proven adequate to provide, in the aggregate, sufficient revenues to cover all operating and capital costs of the Canal through 1991, because the Commission anticipates significant deficits in the aggregate during the next two fiscal years. These deficits are the result of the continuing trend of traffic growth revenues inadequate to absorb cost increases due to inflation. This growing imbalance between inflation and traffic growth underlies the clear need for placing a toll rate increase of 9.9%.

Written comments were solicited and received from interested parties, and a public hearing was held in Washington, DC on June 4, 1992. The views presented by the interested parties were considered by the Board of Directors of the Commission at its quarterly meeting of July 1992. On July 16, 1992, the Board recommended to the President that the proposed 9.9% increase be implemented on October 1, 1992. The proposed rule and recommendation to the President was published in the **Federal Register** (57 FR 32187) on July 21, 1992. A complete record of the proceedings since the initiation of the proposals, including the data, views and arguments submitted by interested parties, was included in the Canal Commission's final recommendation and was forwarded to the President.

Section 1602(b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, as well as to provide capital for plant replacement, expansion and improvements, and working capital. From a review of the information submitted by the Commission, it is evident that for the Canal to remain self-sufficient, a toll increase of 9.9% is required.

List of Subjects in 35 CFR Part 133

Panama Canal, Vessels.

Accordingly, 35 CFR part 133 is amended as follows.

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

2. Section 133.1 is revised to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $2.21 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.76 per net vessel ton.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, $1.23 per ton of displacement.

Dated: August 11, 1992.

George Bush,

President.

[FR Doc. 92-19503 Filed 8-14-92; 8:45 am]

BILLING CODE 3640-04-M

federal register

Monday
August 17, 1992

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1992.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344), section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of August 1, 1992, of 128 rescission proposals and 11 deferrals contained in the special messages for FY 1992. These messages were transmitted to Congress on September 30, and December 19, 1991, and on February 19, March 10, March 20, April 8, April 9, and June 25, 1992.

Rescissions (Table A and Attachment A)

The President proposed 128 rescissions totaling $7,879.5 million. Public Law 102–298 (approved June 4, 1992) rescinded $2,066.9 million of the $7,879.5 million proposed by the President. Attachment A shows the history and status of each rescission proposed during FY 1992.

Deferrals (Table B and Attachment B)

As of August 1, 1992, $3,498.6 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1992.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

56 FR 50620, Monday, October 7, 1991.
56 FR 67402, Monday, December 30, 1991.
57 FR 6644, Wednesday, February 26, 1992.
57 FR 11140, Wednesday, April 1, 1992.
57 FR 11528, Friday, April 3, 1992.
57 FR 13151, Wednesday, April 15, 1992.
57 FR 13779, Friday, April 17, 1992.
57 FR 29610, Thursday, July 2, 1992.

Richard Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1992 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President	7,879.5
Accepted by Congress as of August 1, 1992	2,066.9
Rescission proposals for which funding was previously withheld and has been released	7,330.1
Rescission proposals for which funding was not withheld	25.0
Rescission proposals for which funding is currently being withheld	---

TABLE B

STATUS OF FY 1992 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President	5,774.2
Routine Executive releases through August 1, 1992 (OMB/Agency releases of $4,138.6 million, partially offset by cumulative positive adjustments of $1,863.0 million)	-2,275.6
Overturned by the Congress	---
Currently before the Congress	3,498.6

Attachments

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Cooperative State Research Service								
Building and facilities	R92-36		250	3-20-92	250	5-29-92		
	R92-37		500	3-20-92	500	5-29-92		
	R92-38			3-20-92	500	5-29-92	500	P.L. 102-298
	R92-39		2,710	3-20-92	2,710	5-29-92		
	R92-40		375	3-20-92	375	5-29-92		
	R92-41		3,050	3-20-92	3,050	5-29-92		
	R92-42		225	3-20-92	225	5-29-92		
Cooperative State Research Service	R92-43		225	3-20-92	225	5-29-92		
	R92-44			3-20-92	750	5-29-92	750	P.L. 102-298
	R92-45		94	3-20-92	94	5-29-92		
	R92-46		39	3-20-92	39	5-29-92		
	R92-47		387	3-20-92	387	5-29-92		
	R92-48		85	3-20-92	85	5-29-92		
	R92-49			3-20-92	49	5-29-92	49	P.L. 102-298
	R92-50		125	3-20-92	125	5-29-92		
	R92-51		185	3-20-92	185	5-29-92		
	R92-52		120	3-20-92	120	5-29-92		
	R92-53		134	3-20-92	134	5-29-92		
	R92-54		100	3-20-92	100	5-29-92		
	R92-55		46	3-20-92	46	5-29-92		
	R92-56		200	3-20-92	200	5-29-92		
	R92-57		250	3-20-92	250	5-29-92		
	R92-58			3-20-92	50	5-29-92	50	P.L. 102-298
	R92-59		187	3-20-92	187	5-29-92		
	R92-60		140	3-20-92	140	5-29-92		
	R92-61		76	3-20-92	76	5-29-92		
Extension Service								
Extension Service	R92-62		647	3-20-92	647	5-29-92		
	R92-63		150	3-20-92	150	5-29-92		

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National Agricultural Library								
National Agricultural Library	R92-64		500	3-20-92	462 1/	5-29-92		
Animal and Plant Inspection Service								
Salaries and expenses	R92-35		100	3-20-92	100	5-29-92		
DEPARTMENT OF COMMERCE								
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction	R92-2		18,425	3-10-92	21,425	5-11-92	3,000	P.L. 102-298
DEPARTMENT OF DEFENSE								
Operation and Maintenance								
Operation and maintenance, Army	R92-3		80,798	3-10-92	92,850	5-11-92	12,052	P.L. 102-298
Operation and maintenance, Navy	R92-4		104,520	3-10-92	104,650	5-11-92	130	P.L. 102-298
Operation and maintenance, Marine Corps	R92-5		14,834	3-10-92	22,000	5-11-92	7,166	P.L. 102-298
Operation and maintenance, Air Force	R92-6		3,848	3-10-92	4,500	5-11-92	652	P.L. 102-298
Operation and maintenance, Defense Agencies	R92-7		20,200	3-10-92	20,200	5-11-92		
Procurement								
Aircraft procurement, Army	R92-103		133,000	4-9-92	133,000	6-19-92		
Procurement of weapons and tracked combat vehicles, Army	R92-9		60,000	3-10-92	110,000	5-11-92	50,000	P.L. 102-298
	R92-104		225,000	4-9-92	225,000	6-19-92		
	R92-105			4-9-92			196,300	P.L. 102-298
	R92-106		17,600	4-9-92	17,600	6-19-92		
Procurement of ammunition, Army	R92-10		1,000	3-10-92	1,000	5-11-92		
Aircraft procurement, Navy	R92-11		223,000	3-10-92	262,000	5-11-92	39,000	P.L. 102-298

1/ Only $462,000 was withheld from obligation.

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
	R92-107			4-9-92			15,000	P.L. 102-298
	R92-108		8,000	4-9-92	8,000	6-19-92		
Weapons procurement, Navy	R92-12		13,200	3-10-92	13,200	5-11-92		
	R92-109		130,000	4-9-92	130,000	6-19-92		
	R92-110			4-9-92			4,000	P.L. 102-298
	R92-111			4-9-92			60,000	P.L. 102-298
Shipbuilding and conversion, Navy	R92-13		238,100	3-10-92	238,100	5-11-92		
	R92-101		1,615,900	3-20-92	2,765,900	5-21-92	1,150,000	P.L. 102-298
Other procurement, Navy	R92-14		41,300	3-10-92	41,300	5-11-92		
	R92-102			3-20-92	189,400	5-21-92	189,400	P.L. 102-298
	R92-112		10,000	4-9-92	10,000	6-19-92		
	R92-113		4,000	4-9-92	4,000	6-19-92		
	R92-114		2,000	4-9-92	2,000	6-19-92		
Procurement, Marine Corps	R92-15		40,200	3-10-92	40,200	5-11-92		
	R92-115		6,500	4-9-92	6,500	6-19-92		
Procurement, Defense Agencies	R92-16		154,800	3-10-92	154,800	5-11-92		
National guard and reserve equipment	R92-116		21,000	4-9-92	21,000	6-19-92		
	R92-117		799,300	4-9-92	799,300	6-19-92		
	R92-118		67,000	4-9-92	67,000	6-19-92		
	R92-119		9,300	4-9-92	9,300	6-19-92		
	R92-120		45,000	4-9-92	45,000	6-19-92		
	R92-121		15,000	4-9-92	15,000	6-19-92		
	R92-122		20,000	4-9-92	20,000	6-19-92		
	R92-123		60,000	4-9-92	60,000	6-19-92		
	R92-124		15,000	4-9-92	15,000	6-19-92		
Research, Development, Test and Evaluation								
Research, development, test, and evaluation, Army	R92-18		102,200	3-10-92	102,200	5-11-92		
	R92-125		4,000	4-9-92	4,000	6-19-92		
Research, development, test, and evaluation, Navy	R92-19		140,600	3-10-92	140,600	5-11-92		

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Research, development, test, and evaluation, Air Force	R92-20		127,100	3-10-92	127,100	5-11-92		
	R92-21		320,900	3-10-92	375,900	5-11-92	55,000	P.L. 102-298
	R92-126		3,000	4-9-92	3,000	6-19-92		
	R92-127			4-9-92			248,800	P.L. 102-298
Research, development, test, and evaluation, Defense Agencies	R92-128		5,000	4-9-92	5,000	6-19-92		
	R92-129		6,000	4-9-92	6,000	6-19-92		
	R92-130		70,000	4-9-92	70,000	6-19-92		
Military Construction								
Military construction, Army	R92-22		200	3-10-92	9,050	5-11-92	8,850	P.L. 102-298
Military construction, Navy	R92-23		17,400	3-10-92	17,400	5-11-92		
Military construction, Air Force	R92-24		6,000	3-10-92	6,000	5-11-92		
Military construction, Defense Agencies	R92-25		39,000	3-10-92	48,000	5-11-92	9,000	P.L. 102-298
Military construction, Army National Guard	R92-26		16,565	3-10-92	16,565	5-11-92		
Military construction, Air National Guard	R92-27			3-10-92	306	5-11-92	306	P.L. 102-298
Military construction, Army Reserve	R92-28		2,749	3-10-92	2,749	5-11-92		
Military construction, Naval Reserve	R92-29		25,100	3-10-92	36,000	5-11-92	10,900	P.L. 102-298
DEPARTMENT OF DEFENSE-CIVIL								
Corps of Engineers								
Construction, general	R92-91		3,000	3-20-92	3,000	5-21-92		
Operation and maintenance, general	R92-92		1,350	3-20-92	1,350	5-21-92		
DEPARTMENT OF ENERGY								
Energy Programs								
Fossil energy research and development	R92-34		1	4-8-92	1	6-18-92	144	P.L. 102-298

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R92-30		25,000 2/	3-10-92				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R92-65		547,659	3-20-92	547,659	5-21-92		
	R92-66		1,500	3-20-92	1,500	5-21-92		
	R92-67		1,000	3-20-92	1,000	5-21-92		
	R92-68		2,000	3-20-92	2,000	5-21-92		
	R92-69		150	3-20-92	150	5-21-92		
	R92-70		100	3-20-92	100	5-21-92		
	R92-71		1,200	3-20-92	1,200	5-21-92		
	R92-72		1,000	3-20-92	1,000	5-21-92		
	R92-73		1,300	3-20-92	1,300	5-21-92		
	R92-74		3,900	3-20-92	3,900	5-21-92		
	R92-75		2,500	3-20-92	2,500	5-21-92		
	R92-76		1,500	3-20-92	1,500	5-21-92		
	R92-77		500	3-20-92	500	5-21-92		
	R92-78		1,000	3-20-92	1,000	5-21-92		
	R92-79		1,000	3-20-92	1,000	5-21-92		
	R92-80		505	3-20-92	505	5-21-92		
	R92-81		65	3-20-92	65	5-21-92		
	R92-82		101	3-20-92	101	5-21-92		

2/ Funding was never withheld.

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
	R92-83		1,500	3-20-92	1,500	5-21-92		
	R92-84		700	3-20-92	700	5-21-92		
	R92-85		1,000	3-20-92	1,000	5-21-92		
Annual contributions for assisted housing	R92-86		800	3-20-92	800	5-21-92		
Congregate services program	R92-1		16,700	2-19-92	16,700	4-6-92		
Flexible subsidy fund	R92-31		25,000	3-10-92	25,000	5-11-92		
Policy Development and Research								
Research and technology	R92-87		400	3-20-92	400	5-21-92		
DEPARTMENT OF THE INTERIOR								
National Park Service								
Construction	R92-89		7,700	3-20-92	7,700	5-21-92		
Operation of the national park system	R92-90		1,975	3-20-92	1,975	5-21-92		
Bureau of Indian Affairs								
Operation of Indian programs	R92-32		5,880	3-10-92	5,880	5-11-92		
Construction	R92-88		2,696	3-20-92	8,593	5-21-92	5,897	P.L. 102-298
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Local rail freight assistance	R92-33		9,880	3-10-92	9,880	5-11-92		

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
ENVIRONMENTAL PROTECTION AGENCY								
Research and development	R92–98		116	3–20–92	116	5–21–92		
Abatement, control and compliance	R92–93		1,250	3–20–92	1,250	5–21–92		
	R92–94		390	3–20–92	390	5–21–92		
	R92–95		70	3–20–92	70	5–21–92		
	R92–96		1,450	3–20–92	1,450	5–21–92		
Buildings and facilities	R92–97		20,000	3–20–92	20,000	5–21–92		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Construction of facilities	R92–99		3,400	3–20–92	3,400	5–21–92		
Research and development	R92–100		750	3–20–92	750	5–21–92		
TOTAL RESCISSIONS		0	5,812,527		7,330,191		2,066,946	

ATTACHMENT B
Status of FY 1992 Deferrals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 8–1–92
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D92–1	244,777		09–30–91					
	D92–1A		1,623,312	12–19–91	1,876,410			1,108,866	1,100,545
Foreign military financing	D92–8	1,908,000		12–19–91					
	D92–8A		93,098	06–25–92	996,300			695,578	1,700,376
Agency for International Development									
International disaster assistance, Executive	D92–2	40,704		09–30–91					
	D92–2A		12,483	02–19–92	65,032			34,068	22,224
Demobilization and transition fund	D92–9	13,000		12–19–91					13,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D92–3	482,378		09–30–91	135,434				346,944
Expenses, brush disposal	D92–10	101,006		12–19–91					101,006
Timber salvage sales	D92–11	131,549		02–19–92					
	D92–11A		50,000	06–25–92	30,000				151,549
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D92–4	1,416		09–30–91	93				1,324

[FR Doc. 92-19518 Filed 8-14-92; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT B
Status of FY 1992 Deferrals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 8–1–92
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D92–5	7,317		09–30–91					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D92–6	30,053		09–30–91					
	D92–6A		24,750	12–19–91	25,000			24,520	54,323
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D92–7	1,010,375		09–30–91	1,010,375				0
TOTAL, DEFERRALS		3,970,575	1,803,643		4,138,644	0		1,863,033	3,498,607

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
0-26	(869-017-00007-8)	17.00	Jan. 1, 1992
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
900-999	(869-017-00016-7)	29.00	Jan. 1, 1992
1000-1059	(869-017-00017-5)	17.00	Jan. 1, 1992
1060-1119	(869-017-00018-3)	13.00	Jan. 1, 1992
1120-1199	(869-017-00019-1)	9.50	Jan. 1, 1992
1200-1499	(869-017-00020-5)	22.00	Jan. 1, 1992
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
1940-1949	(869-017-00023-0)	23.00	Jan. 1, 1992
1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-017-00026-4)	17.00	Jan. 1, 1992
9 Parts:			
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200-End	(869-017-00028-1)	18.00	Jan. 1, 1992
10 Parts:			
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51-199	(869-017-00030-2)	18.00	Jan. 1, 1992
200-399	(869-017-00031-1)	13.00	[4] Jan. 1, 1987
400-499	(869-017-00032-9)	20.00	Jan. 1, 1992
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11	(869-017-00034-5)	12.00	Jan. 1, 1992
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*§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
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§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1, 1992
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500-599	(869-017-00100-7)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
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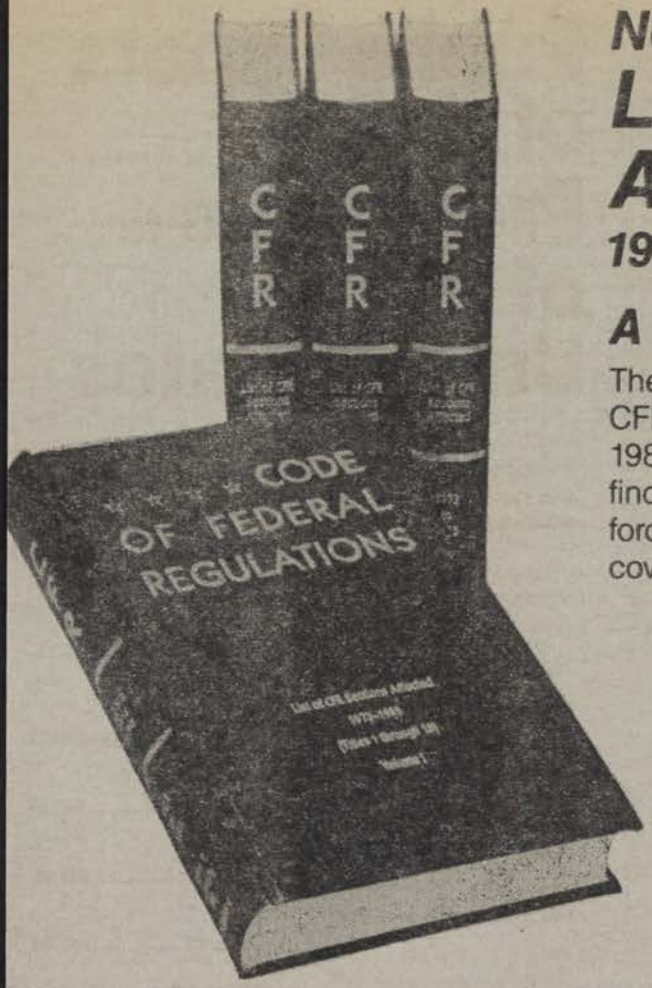

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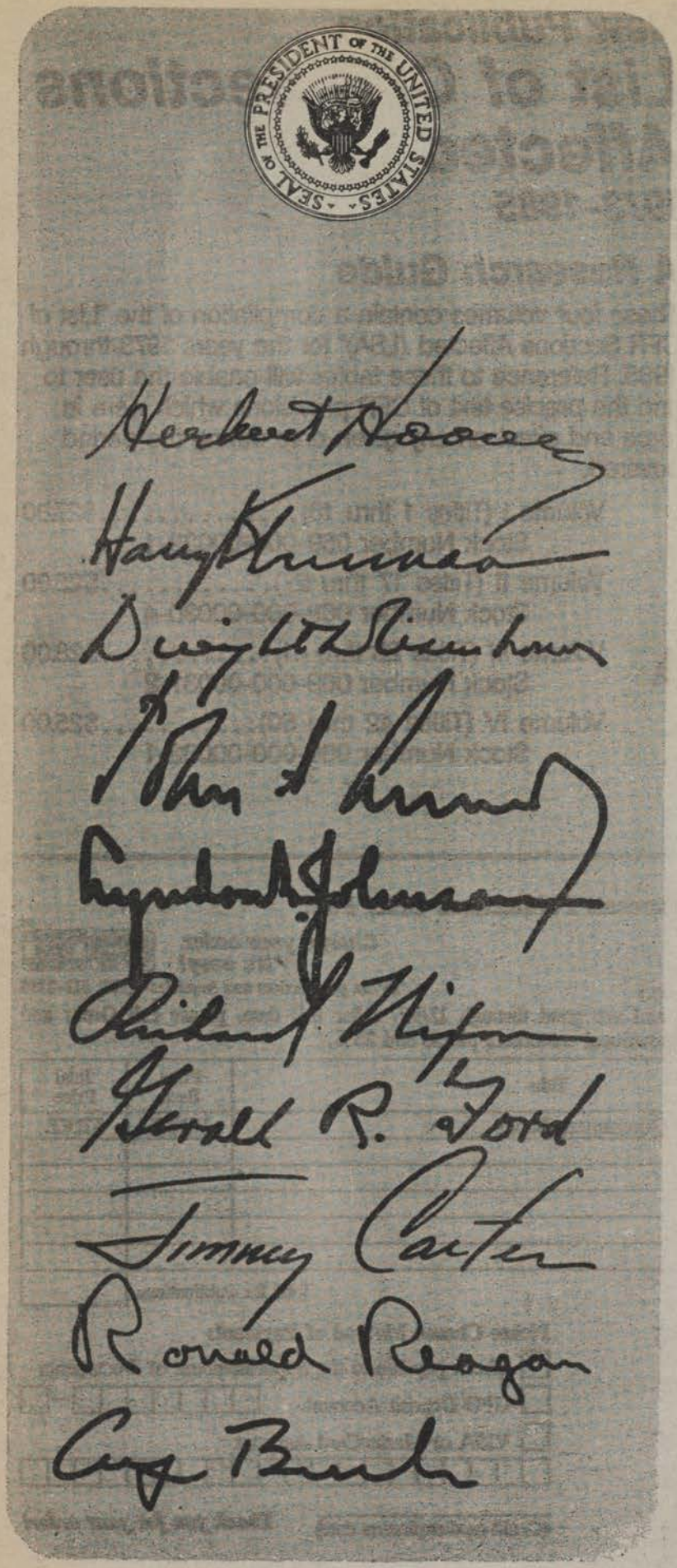

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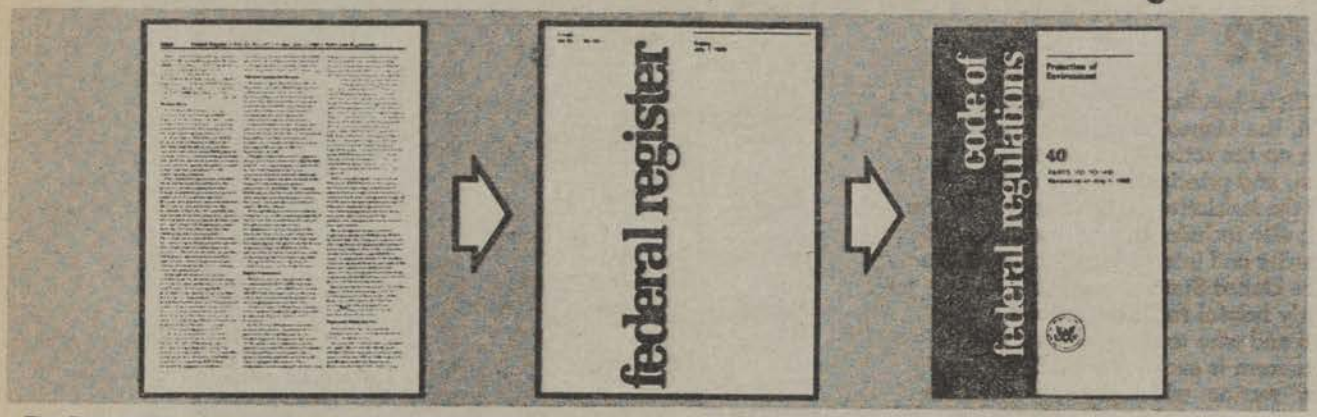

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